

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF GEORGIA  
3 AUGUSTA DIVISION

4 UNITED STATES OF AMERICA :  
5 : Criminal Action No.  
6 : 108-CR-099  
7 vs. :  
8 :  
9 DANIEL WEBSTER CASON, : Augusta, Georgia  
10 : December 1, 2009  
11 Defendant. : 9:03 a.m.  
12 \_\_\_\_\_ :  
13

14 SENTENCE  
15 BEFORE THE HONORABLE J. RANDAL HALL  
16 United States District Judge  
17

18 A-P-P-E-A-R-A-N-C-E-S

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## I-N-D-E-X

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1 P-R-O-C-E-E-D-I-N-G-S

2 (Court called to order at 9:03 a.m.)

3 THE CLERK: Good morning. This morning we're here to  
4 conduct the sentencing in the case of United States of America  
5 versus Daniel Webster Cason; Criminal Action Number CR108-099.  
6 All parties are present and ready to proceed, your Honor.

7 THE COURT: Thank you.

8 Good morning, everyone. The Court notes the  
9 appearances as follows:

10 Mr. David Stewart on behalf of the United States  
11 Government. Mr. James Pete Theodocion on behalf of the  
12 defendant.

13 And are you Daniel Webster Cason?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And the Court notes that the defendant,  
16 Mr. Daniel Webster Cason, has, by that response, indicated that  
17 he is present in the Court today.

18 Daniel Webster Cason appeared before this Court on  
19 March 31st, 2009, accompanied by his attorney, James Pete  
20 Theodocion, for a Rule 11 Proceeding. Pursuant to a plea  
21 agreement, the defendant pled guilty and was adjudged guilty of  
22 Counts Three, Five and Eleven of the indictment, charging him  
23 with false statements in violation of 33 United States Code  
24 Section 1319(c)(4).

25 Upon completion of the Rule 11 Proceeding and the

1 Court's acceptance of the guilty plea, the Court directed the  
2 probation office to prepare a Presentence Report and to  
3 disclose the report to the Government and the defendant.

4 Mr. Theodocion, have you and Mr. Cason had an  
5 opportunity to read and to discuss the Presentence Report?

6 MR. THEODOCION: Yes, your Honor, we have.

7 THE COURT: I note, Mr. Theodocion, that you have  
8 filed a number of objections to the report.

9 MR. THEODOCION: Yes, sir, your Honor.

10 THE COURT: And those are attached as an addendum to  
11 the Presentence Report. Are all of those still active  
12 objections? Has any success been made by you and the  
13 Government to whittle these down, or are they still all active  
14 objections that we need to address this morning?

15 MR. THEODOCION: I think they're all active, your  
16 Honor. I'm not sure all of them need to be addressed. Some of  
17 the points I made responded to -- they didn't necessarily go  
18 into the computation of the guideline range.

19 THE COURT: Okay.

20 MR. THEODOCION: But the ones that do, certainly, we  
21 need to address them.

22 THE COURT: All right. Well, let's go through this  
23 then one at a time. Your first objection, Mr. Theodocion, is  
24 to Paragraph Five in which you appear to dispute the  
25 application of the Clean Water Act. Specifically, your notion

1 that the stream is not a navigable water under the Clean Water  
2 Act. Is that an issue you wish to address? And, quite  
3 frankly, in looking at the response from the probation office,  
4 I tend to agree with her in that Mr. Cason signed a plea  
5 agreement and the factual statement that stated that he  
6 knowingly made false material statements in reports and records  
7 required to be filed or maintained under the Clean Water Act.  
8 It seems to me he's acknowledging the CWA does apply. And  
9 furthermore -- go right ahead.

10 MR. THEODOCION: Okay.

11 THE COURT: Furthermore, he's pled guilty to filing  
12 false statements. We're not pleading guilty to, specifically,  
13 the violations of the Clean Water Act. Is that correct?

14 MR. THEODOCION: We -- Judge, that is correct. But  
15 what we have here, you know, in total we've got a 17-level  
16 computation. Ten of those 17 levels, which involve one  
17 incident on or about January 29th of 2004, involve the  
18 discharge into a tributary of a creek which flows into the  
19 Savannah River. So for purposes of that incident in  
20 particular, we do want to bring up this issue.

21 Under the Clean Water Act, if a, in this case the  
22 Georgia Department of Natural Resources its Enviromental  
23 Protection Division, they make a determination if the body of  
24 water applies. And then based on that, they require you as a  
25 condition of your permit to discharge pollutants to file

1 certain reports. I do think you can make a distinction  
2 between, you know, the mechanisms under the Clean Water Act  
3 that lead to these determinations of permits and waters require  
4 filings, but still maintain the right to dispute the fact that  
5 if you're discharging pollutants into a specific piece of water  
6 that that is a water of the United States. You really couldn't  
7 expect a person to not cooperate with state filing requirements  
8 on the hopes that later maybe he could challenge jurisdiction  
9 under the Clean Water Act altogether.

10           It's, to speak broadly about that Act, your Honor,  
11 you know, that Act basically delegates to -- you know, Congress  
12 when they did the Clean Water Act, they can't name every piece  
13 of water obviously. They end up delegating to the United  
14 States Court of Engineers. I believe there are 40 states that  
15 have the power under that Act to grant permits under the Clean  
16 Water Act. And so the issue of whether a piece of water, even  
17 once it's determined by, in this case, the State Department of  
18 Natural Resources that the Clean Water Act applies, that's  
19 still an issue of fact.

20           And it's important here, Judge, because clearly the  
21 most serious violation charged in this indictment was that  
22 discharge. The record keeping acts have a maximum two years  
23 confinement per count. Clearly the most serious charge that  
24 was that discharge. There was a significant issue of fact as  
25 to whether or not the stream, the tributary in which the

1 discharge occurred, the Government would have had jurisdiction.  
2 And, of course, in front of a jury they would have had to prove  
3 that beyond a reasonable doubt. So in a lot of ways this case  
4 is sort of a microcosm of a lot of the concerns and problems  
5 with the sentencing guideline structure itself because we're  
6 here today under a different standard of proof.

7           And if I could go further, I don't know if your Honor  
8 wants me to stop there, but just regarding jurisdiction, Judge,  
9 real briefly. Again, at this point in time there is no clear,  
10 you know, indication from the Supreme Court on exactly how you  
11 make that determination. We're at a point now where I believe,  
12 most recently, in a case that came out of the Eleventh Circuit,  
13 *United States versus McWane*, the Justice Department asked the  
14 Supreme Court to review that case to clear up the confusion  
15 over what the definition of waters of the United States is.  
16 That all came out of the Rapanos decision.

17           And again, Judge, just briefly, in that case, you  
18 basically had a four justice plurality which made a  
19 determination of what water of the United States was, what was  
20 required. You had a fifth justice that joined in, but there  
21 was never a majority of justices that actually defined what it  
22 was. Justice Scalia wrote the opinion which was joined by the  
23 Chief Justice Roberts, Justice Thomas and Justice Alito. He  
24 wrote the opinion and basically mocked, I mean he mocked the  
25 expansion of federal jurisdiction by states, in this particular

1 case, the Army Corps of Engineers, and just commented over and  
2 over again how they're trying to grab every piece of water  
3 there is out there. You know, their jurisdiction under the  
4 Clean Water Act comes as so much of their claimed jurisdiction  
5 does over commerce laws. And the Savannah River is an  
6 interstate piece of water. That's one thing. But they want to  
7 go further and further and further to claim wetlands, in this  
8 case an unnamed tributary that goes into a creek that goes into  
9 the Savannah River. So the question is, what kind of  
10 connection is required.

11 In talking about -- commenting on a case, *Solid Waste*  
12 *Agency v. United States Army Corps of Engineers*, which is 531  
13 U.S. 159, Justice Scalia wrote that, even after that case:

14 "The lower courts have continued to uphold the  
15 core's" -- in this case he was dealing with the Corps of  
16 Engineers -- "sweeping assertions of jurisdiction over  
17 ephemeral channels and drains as tributaries. For example,  
18 courts have held that jurisdictional tributaries include the  
19 intermittent flow of surface water through approximately 2.4  
20 miles of natural streams and man-made ditches under I-64, a  
21 roadside ditch, whose water took a winding 32-mile path through  
22 the Chesapeake Bay, irrigation ditches and drains that  
23 intermittently connect to covered water and, most implausibly  
24 at of all, the washes and of an arid development site located  
25 in the middle of the desert through which water courses during



1 periods of heavy rain."

2                   They just frowned upon the expansion of the  
3 jurisdiction and what lower courts have done. Concluded, and  
4 he was joined again by Roberts, Alito and Thomas, just four of  
5 the justices. He concluded:

6                   "And some on its only plausible interpretation  
7 the phrase waters of the United States includes only those  
8 relatively permanent, standing or continuously flowing bodies  
9 of water forming geographic features that are described in  
10 ordinary parlance as streams, oceans, rivers and lakes. The  
11 phrase does not include channels through which water flows  
12 intermittently or ephemerally or channels that periodically  
13 provide drainage for rainfall."

14                   And so given that, what they've done, Judge,  
15 they've had a survey done. What the Government did in  
16 anticipation of trial, realizing that they were going to have  
17 to show a connection with that piece of water and interstate  
18 water, in this case the Savannah River. They had the United  
19 States Enviromental Protection Agency, Region Four, Science and  
20 Ecosystem Support Division did a report based on analysis of  
21 the water on August 4th and 5th of 2008, some four-and-a-half  
22 years after the incident on January 29th, 2008. And we would  
23 enter this into the record. I don't think the Government has  
24 an objection.

25                   The conclusion of this report, Judge, in Section

1 Six:

2 "The receiving water at the Harlem Wastewater  
3 Treatment Plant is a perennial headwater stream. Cumulatively,  
4 headwaters have well-known effects on the physical, chemical  
5 and biological integrities of downstream waters. The subject  
6 stream segment has all the characteristics typically associated  
7 with forested headwaters in the southeastern plain. Given  
8 these characteristics and given the known relationships between  
9 the headwater and rivers and similar watersheds, it is highly  
10 likely that the subject segment has such effects, ultimately,  
11 on the Savannah river. Additionally, the stream is in a  
12 landscaped position relative to the site to receive surface  
13 water flows from the border of the wastewater treatment plant  
14 site."

15 So the conclusion was, basically, hey, it shares  
16 a lot of characteristics of these other waters. Given all  
17 these things, these known relationships, it is highly likely  
18 that this subject segment of water has those effects on the  
19 Savannah River. And, of course, when you're in front of a  
20 jury, and you're trying to prove something beyond a reasonable  
21 doubt, "highly likely" oftentimes can't get you there. And,  
22 again, here, we're facing a preponderance of the evidence where  
23 it certainly can. And that's what's so worrisome in this case  
24 is that then it's, in effect, such a bottom-up situation where  
25 the 10 levels of the 17, basically the entire, you know, the

1 brick and mortar of this particular sentence is based on an  
2 incident which, if in front of a jury, jurisdiction would be  
3 highly questionable that it could be proved. And it's much  
4 stronger in a case like this with a lower burden.

5           Based on the uncertainty as to what the  
6 definition of United States water is, and not surprisingly,  
7 there's been a bill introduced this year in Congress where they  
8 actually do want them to define it as any piece of water, be it  
9 a completely intrastate, which is no surprise. But right now,  
10 there is such uncertainty. We have to leave that objection in  
11 the record going forward. And I did want to at least make  
12 those concerns known to the Court regarding the lower standard  
13 of proof here and how that affected what really amounted to the  
14 real meat and potatoes charge in this indictment. And that's  
15 all I've got on the jurisdiction right now, Judge.

16           THE COURT: All right. Let me allow Mr. Stewart to  
17 respond then. Can I see that report by the way.

18           MR. THEODOCION: Yes, sir. And I'll introduce it.  
19 If I can have this marked as Defendant's Exhibit 1.

20           THE COURT: That will be fine.  
21 Mr. Clerk.

22           MR. THEODOCION: And I don't think there will be any  
23 objection to having that introduced as evidence.

24           THE COURT: Mr. Stewart, how would you like to  
25 respond to the issue of jurisdiction under the Clean Water Act?

1           MR. STEWART: Well, your Honor, we share the view of  
2     the probation officer as the Court has indicated. The view  
3     that Mr. Cason has come in here and pled guilty to the Clean  
4     Water Act. And what is the jurisdictional hook, in the  
5     lawyer's parlance, that gets us here in federal court? Why is  
6     it that the Clean Water Act applies? Well, it applies because  
7     we're talking about waters of the United States. And the  
8     defendant came in voluntarily, without coercion, and pled  
9     guilty to violating the Clean Water Act.

10           And while I understand the, you know, the discussion  
11    of the interpretation of the Clean Water Act and navigable  
12    waters and waters of the United States, and I certainly agree  
13    with Mr. Theodocion that the *Rapanos* decision from the United  
14    States Supreme Court is not what you would call a model of  
15    clarity. That's beyond the point. The defendant has come in  
16    and pled guilty, he's been examined by yourself, your Honor,  
17    and knowingly and voluntarily pled guilty to violating the  
18    Clean Water Act, three counts of the Clean Water Act. And so,  
19    while I understand why he wants to note on the record feelings  
20    about the scope of the Clean Water Act, it's besides the point.

21           But more importantly, I was thinking about this last  
22    night trying to draw an analogy. It's a federal crime, for  
23    example, to go falsify bank records because -- what's our  
24    jurisdictional hook on that? Well, FDIC insured. All these  
25    banking regulations, it's because there's a jurisdiction hook.

1 If there wasn't a jurisdiction hook then why file the reports,  
2 why -- they're just not subject to federal law. So if you  
3 plead guilty to falsifying bank records, for example, you've  
4 admitted that jurisdiction applies. And then to come in at  
5 sentencing and to say, well, the bank is not FDIC insured, for  
6 example. Or if somebody came in and robbed that bank but said,  
7 it's not FDIC insured, but he's already admitted that federal  
8 law applies, it just doesn't make sense then at sentencing to  
9 say, well, there's no jurisdiction hook. There is in this  
10 case.

11 We have no objection to the scientist report coming  
12 in, your Honor, because the standard set by the controlling  
13 opinion according to the Eleventh Circuit is Justice Kennedy's  
14 opinion in the *Rapanos* decision which talks about chemical,  
15 biological and physical connections between the receiving  
16 waters, in this case the body of water that's right next to the  
17 wastewater treatment plant out there in Harlem and the Savannah  
18 River which is navigable in fact. You can take a boat down to  
19 the ocean on the Savannah River. And the scientist reports  
20 there, he went out and walked the stream, looked at the  
21 biological components, the chemical components, the physical  
22 components and said this connection exists. And so we have no  
23 problem with that report coming in because we believe it  
24 exists, and that was a factual basis upon which the defendant  
25 could plead guilty to the Clean Water Act.

1           And finally, as a matter of common sense, who builds  
2   a wastewater treatment plant next to a body of water that is  
3   not capable of carrying away the treated wastewater? I mean  
4   this is a wastewater treatment plant for the City of Harlem.  
5   You don't put it off on some isolated waterway that just  
6   doesn't have a physical, chemical, or biological connection to  
7   a major body of water. That's just common sense. You've got  
8   to be able to carry these things away. So in this case, the  
9   Clean Water Act applies. Jurisdiction is proper. And  
10   defendant has already acknowledged that. And that's the  
11   Government's position on the matter.

12           THE COURT: Thank you.

13           Gentlemen, what I'm going to do during this hearing  
14   today is I'm going to hear arguments and testimony or other  
15   evidence from you on each of these objections. And then what I  
16   will do is I will render my findings and conclusions along the  
17   way rather than waiting until the end of all of these and  
18   entering findings of fact and conclusions as a group.

19           So as it relates to Defendant's Objection Number One  
20   to Paragraph Five of the Presentence Report, specifically, the  
21   objection or the dispute that the perennial stream running  
22   along the Harlem Wastewater Treatment Plant is water of the  
23   United States and thus within the enforcement of the Clean  
24   Water Act, the Court has listened to the argument of counsel  
25   for the defendant and for the Government. The Court has

1 reviewed the probation officer's response thereto.

2           In addition, the Court has reviewed what will be  
3 marked Defendant's Exhibit One which is a final report prepared  
4 by the United States Enviromental Protection Agency on the  
5 Harlem Wastewater Treatment Plant, Ecological Evaluation of the  
6 receiving water, dated August 4th through 5th, 2008. The Court  
7 notes that on Page Six of the report, in conclusions marked  
8 Section 6.0, that the conclusion is that the receiving water at  
9 the Harlem Wastewater Treatment Plant site is a perennial  
10 headwater stream. It notes that given the characteristics of  
11 the stream and the known relationships between headwaters and  
12 rivers and similar watersheds, it is highly likely that the  
13 subject segment has the necessary effects on the Savannah  
14 River.

15           The Court believes that based upon the  
16 preponderance of the evidence standard that these conclusions  
17 support the position by the Government and the Enviromental  
18 Protection Agency that the headwater stream which is a  
19 tributary of the Euche Creek, again, which affects the  
20 Savannah River, is a water of the United States and is thus  
21 maintained under the purview of the Clean Water Act.

22           The Court further finds that notwithstanding  
23 this finding, that in the factual basis to the defendant's plea  
24 agreement, in this particular case, the defendant acknowledged  
25 that the records and reports that he filed were both filed and

1 maintained under the Clean Water Act. Therefore, the Court  
2 finds that the defendant himself has acknowledged the  
3 application of the Clean Water Act in this particular case.  
4 Therefore, the objection based on these findings is overruled.

5 Now, Mr. Theodocion, let's address the objection  
6 that you've raised to Paragraph Seven.

7 MR. THEODOCION: Judge. I'm sorry, your Honor.

8 THE COURT: Go right ahead.

9 MR. THEODOCION: That would be one which I don't  
10 think needs to be taken up for the purposes of the sentencing  
11 hearing. Paragraph Eight as well. I feel like all we need to  
12 do is focus on the objections that directly relate to the  
13 application of the guidelines. Which the remaining ones, we  
14 did not dispute the base offense, of course. So we had,  
15 basically, there were four enhancements. We did not dispute  
16 the public trust. So we're left with the discharge of the  
17 pollutant into the stream, six levels. The four-level increase  
18 for the discharge either without or in violation of a permit.  
19 In this case, it would be in violation of as opposed to  
20 without. And then the two levels for obstruction. Those  
21 three.

22 If I could, Judge, maybe just, because I think we're  
23 going to have a lot more to discuss with regard to the  
24 discharge, perhaps I could take up about the obstruction at  
25 this point.



1           THE COURT: Yes, that will be fine. For the purpose,  
2    though, of kind of developing our record, Mr. Theodocion, I  
3    want to make sure, then, as it relates to the objection to  
4    Paragraph Seven, is it my understanding that the parties are in  
5    agreement that this does not affect the application of the  
6    guidelines or the sentencing? So that particular objection  
7    does not need to be addressed; is that your position?

8           MR. THEODOCION: I believe that is the case.

9           THE COURT: Do you agree with that?

10          MR. STEWART: I agree with Mr. Theodocion that an  
11    appropriate way to go forward is to focus on the objections  
12    that affect the guideline calculation.

13          THE COURT: All right. So the objection to Seven,  
14    which we have Number Two in our addendum, then, that one does  
15    not need to be addressed, correct?

16          MR. THEODOCION: That is correct, your Honor.

17          THE COURT: And then as it relates to, you said  
18    Paragraph Eight, which is Number Three in our addendum to the  
19    Presentence Report, likewise, we do not need to take that up  
20    because it does not affect the calculation of the guidelines,  
21    correct?

22          MR. THEODOCION: Correct, your Honor.

23          THE COURT: Then as we -- well, are there any others?  
24    Specifically point out to the Court so that we can reflect it  
25    in the record then, the objections that are at this point moot,

1 if you will, because they do not affect the application of the  
2 guidelines in your mind.

3 MR. THEODOCION: I believe that Number Four, which  
4 refers back to Paragraph Nine in the Presentence Report, that  
5 that is going to be addressed in my Number Five. So  
6 specifically just to focus on Paragraph Nine won't be  
7 necessary. So we're left with my Number Five regarding  
8 Paragraphs 10, 14, 16, 26 and 27.

9 THE COURT: Okay.

10 MR. THEODOCION: Your Honor, my Number Seven I don't  
11 believe is necessary to take up on its own. If I could just  
12 double-check that, Judge.

13 THE COURT: Go right ahead.

14 MR. THEODOCION: That is correct. I withdraw Number  
15 Seven. So I'm left with my Number Five which deals with the  
16 discharge allegations and then my Number Eight which deals with  
17 obstruction of justice.

18 THE COURT: All right then, let's take up Eight, the  
19 obstruction of justice.

20 MR. THEODOCION: Judge, obviously, we're dealing  
21 with, in this case, the two-level enhancement for obstruction  
22 of justice. That's primarily based on, as you see in  
23 Paragraphs 19 through 22 of the Presentence Report. On June  
24 the 2nd, the grand jury was meeting in Savannah on June the 3rd  
25 of 2008. A subpoena was served on a Robert Fields who at that

1 time was the head operator of the Harlem Wastewater Treatment  
2 Plant. And he served in the capacity of Assistant Director of  
3 Public Works. Subpoena was served on him at approximately  
4 10:30 a.m. on the 2nd of June of '08 -- and that is from  
5 Presentence Report Addendum, Page Seven -- for grand jury in  
6 Savannah the next morning.

7 And through Robert's -- Mr. Field's, excuse me, grand  
8 jury testimony and interviews with agents, I mean, he described  
9 what amounts to a very hectic situation with dealing with,  
10 first, telephoning Daniel Cason, contacting attorneys at the  
11 Fulcher Hagler Law Firm, contacting City Administrator Jean  
12 Dove to try to gather all these things to be in Savannah,  
13 Georgia the next morning for grand jury testimony.

14 According to the Presentence Report, the documents  
15 which -- and I'm on the addendum right now, your Honor, Page  
16 Six. Ms. Mitchell indicates that of the documents which are  
17 "of importance," are:

18 Number One, the as-builts for the Harlem Wastewater  
19 Treatment Plant.

20 Number Two, receipts for rental equipment.

21 And Number Three, 2002 through 2004 operators logs.

22 Those were documents that Mr. Fields arrived in  
23 Savannah without. And I'll take them one by one, Judge.

24 First of all, regarding the as-builts. As-builts are  
25 kind of the difference between a blue print before you start

1 the construction project and how the thing is actually built.  
2 As built. And this is a treatment plant that, going back, is  
3 either 40 and 50 years old. It's been modified and developed  
4 over time. And as you go forward over time, the as-builts are  
5 added onto. And so what, in grand jury testimony of  
6 Mr. Fields, he basically describes just a lot of different  
7 plants.

8 THE COURT: Excuse me. I don't mean to interrupt  
9 you.

10 Do you have an objection?

11 MR. STEWART: I apologize for interrupting. The  
12 Government has no issue with the as-builts and also the rental  
13 equipment. So if it saves counsel time. But I apologize for  
14 interrupting. As far as the Government is concerned we can  
15 just focus in on the operators log for the years 2002 to 2004.

16 THE COURT: Is that okay, Mr. Theodocion?

17 MR. THEODOCION: That will be fine, your Honor. That  
18 will certainly save us time. And we agree with the Government  
19 that there was no -- that Mr. Cason had nothing to do with the  
20 absence of --

21 THE COURT: All right. So we can focus on the  
22 operator logs for that period.

23 MR. THEODOCION: Yes. Operator logs from 2002  
24 through 2004. And I do want to, I know we're not going there,  
25 but I think it's sort of -- it's all kind of part and parcel

1 with going back to those two things though. Just the nature of  
2 these documents. You had documents that you have at the plant,  
3 documents at City Hall. You had documents that nobody knew  
4 where they were.

5 I wanted to point out that, in fact, according to the  
6 depositions of Ted Stack, who is a State of Georgia  
7 Environmental Protection Division Program Manager, who is based  
8 in this area, he gave us a deposition in a civil case in 2008  
9 where he noted that he took flowcharts in 2004, took originals  
10 from the plant, and as of June 5th, 2008, no one had any idea  
11 where they were. He took the original flowcharts showing the  
12 flows. He did not take a receipt -- he did not give the City  
13 of Harlem a receipt for his taking of those documents. And at  
14 the deposition he said that there was nothing in writing  
15 acknowledging receipt of the original documents. At that time  
16 he was asked:

17 Do you know where the circular flowcharts are today?

18 No, I wish I did.

19 To your knowledge are they lost?

20 I don't know if they're lost or not.

21 And so you had documents that otherwise might have  
22 been pertinent to this that were lost by the State of Georgia.  
23 In any event, Judge, Mr. Fields gave deposition testimony where  
24 he described a very, very hectic situation in interviews with  
25 on August the -- kind of going back, he testified in front of

1 the grand jury on two occasions. He went down in June or,  
2 excuse me, what I said before, yeah, on June the 3rd of '08  
3 without those documents. They brought him back in July of '08,  
4 and he still did not have the documents.

5 In his grand jury testimony, he's told as he's going  
6 through the process, at some point, I believe it's Assistant  
7 United States Attorney Bourne tells him, we need to cut this  
8 thing off. You need to get your own attorney. There's an  
9 attorney there with the City of Harlem. He was -- Mr. Field's  
10 was told, this has gone far enough. You need to get your own  
11 attorney. In between, after that date, he did obtain private  
12 counsel. He reached a proffer agreement. And then in August,  
13 shortly thereafter, he actually came in with those logbooks.

14 I do want to go over what the various individuals  
15 told us occurred, Judge, subsequent to that June the 2nd  
16 subpoena with the logbooks. Now, I'm going from the  
17 Environmental, the EPA, criminal investigation division report.  
18 It looks like they call it Form 008. It would equate to an FBI  
19 302. The missing logbooks contained a 2002, 2003 and up to  
20 April 2004. All that was in one spiral-bound notebook. Mr.  
21 Fields was served the subpoena in early June. He indicated  
22 that he called Daniel Cason, Director of Public Works. Most of  
23 the documents requested were found at the plant and Fields, not  
24 Cason, made photocopies of some of the documents at the plant.  
25 Fields found two operator logbooks ranging from 2002 through

1 2006.

2 Continuing on, Fields, not Cason, carried all of the  
3 documents found including the logbooks to Fields' work vehicle,  
4 a white Crown Victoria. And Fields put the documents in the  
5 backseat. The documents and logbooks were not in a bag or a  
6 box or any container. Fields then drove his Crown Victor with  
7 the documents to the Administration Building for the City of  
8 Harlem. And Cason also drove there separately in his work  
9 vehicle.

10 At this point, according to Fields, he, Cason, City  
11 Administrator Jean Dove and Renee Martin, Dove's assistant,  
12 began photocopying documents. Cason did not do any -- and I'm  
13 leaving out some words, Judge.

14 THE COURT: I understand.

15 MR. THEODOCION: Cason did not do any photocopying  
16 and may have been removing staples from documents so they could  
17 be photocopied. Fields doesn't specifically recall the  
18 logbooks being photocopied. The documents were placed in a box  
19 by Fields, put in an office in the Administration Building  
20 shared by Fields and the mayor. Everyone left the  
21 Administration Building at 7:00 p.m. or 7:30 p.m. Dove,  
22 Martin, Jerry Campbell, Fields, the mayor and Bea Doody,  
23 secretary, had keys to the Administration Building, not Cason.

24 The next day at approximately 8:30 a.m. Fields  
25 arrived at the Administration Building. Fields thumbed through

1 the box but didn't take a detailed inventory. Fields believed  
2 everything was in the box that he and others had found and  
3 copied. Fields thinks that Martin was in the Administration  
4 Building when Fields picked up the box of documents. Fields  
5 put the box in the back of his Crown Victoria and left to meet  
6 with his attorney in Waynesboro near the Lakeview Diner.

7 Now, this all occurred, this is his recollection of  
8 what happened in June when he got the subpoena to be at grand  
9 jury the next day. And as I indicated, he then went back to  
10 grand jury later on in the year. Subsequent to that, around  
11 mid-July, this is after his second appearance when he was told,  
12 you need to get a lawyer, and in fact he did obtain a lawyer.  
13 Around mid-July, Fields was at the plant with Cason, and he  
14 told Cason that they absolutely have to find the missing  
15 logbook. Cason then told Fields that he had a copy of the  
16 missing logbook and provided Fields with that copy.

17 Fields asked Cason why he had copies of that logbook,  
18 and Cason said the copy was made when Ted Stack of the Georgia  
19 EPD came to the plant and took some flowcharts and possibly  
20 that logbook, or copy, was made when Attorney Lee Bennett of  
21 the Fulcher and Hagler Law Firm was taking documents due to  
22 civil litigation. So after being told on July 8th that he  
23 needed an attorney, in mid-July after obtaining an attorney and  
24 getting his proffer agreement, he then came back and came in  
25 with the logbooks and said, well, I told Daniel Cason we needed



1     them and he gave me a copy.

2             According to Jean Dove, who was also asked about what  
3     happened on the 2nd, she believed that the documents were  
4     brought over to her office to be copied sometime after lunch  
5     that day. Beverly Martin left at 5:00 p.m. and Dove continued  
6     copying the documents and putting some in manila envelopes with  
7     the assistance of Fields until about 7:30 p.m. Cason was also  
8     present but didn't assist much in this process.

9             According to Renee Martin, the Administrative  
10    Assistant to the City of Harlem, in her interview on July 14th,  
11    2008, she said, Martin does not remember who searched for the  
12    document and she doesn't remember who brought her the documents  
13    to be copies, but is pretty sure it wasn't Daniel Cason. Later  
14    she said that she didn't recall Fields making any comments  
15    about Cason assisting in the search for the documents. Martin  
16    doesn't recall Cason assisting at all.

17            So basically, Judge, what we have in the record are  
18    documents which numerous people could have possibly had access  
19    to. No one, at least not the record we've seen so far, not in  
20    grand jury testimony, other than what I said, is it ever said,  
21    well, Daniel Cason had those logbooks or Daniel Cason took  
22    those logbooks. So there's no direct evidence whatsoever.  
23    What it amounts to is a situation where the two people that one  
24    would have to say, if there is something to hide in those  
25    logbooks, Mr. Fields and Mr. Cason -- at some point the

1 documents were produced. But at the time of the subpoena, both  
2 of them were in jeopardy. Mr. Fields had not been told, you're  
3 not a target here. If he had, I'm not aware of it. I know  
4 eventually he had to obtain a lawyer and get a proffer  
5 agreement.

6 And so, basically, according to the Presentence  
7 Report, it ends up coming down to, well, the documents were  
8 missing; therefore, it must be Daniel Cason that took them.  
9 That's the extent of it. And we would offer at the very least  
10 as of June the 2nd, 2008, Mr. Fields possibly could have had  
11 just as much incentive to get rid of the documents as Mr. Cason  
12 or anybody else. But most importantly, there's just no direct  
13 evidence whatsoever that attaches Daniel Cason to the fact that  
14 those documents were missing. And, in fact, according to  
15 Mr. Fields, he came back and was able to get copies of the logs  
16 from Mr. Cason himself. And so we don't think the evidence is  
17 here, Judge, to warrant the two-level enhancement for  
18 obstruction.

19 THE COURT: Thank you.

20 Mr. Stewart, he makes a very compelling argument on  
21 that issue. What do you say?

22 MR. STEWART: Well, your Honor, getting to his  
23 statement about the record. I ask for the Court's direction on  
24 how to proceed on this. The probation officer in recommending  
25 this enhancement relied upon the grand jury transcripts and the

1 two reports of interviews by the P.A. agent and Mr. Fields.  
2 And, respectfully, the totality of those documents paints  
3 somewhat of a different picture of what occurred regarding the  
4 missing logbook that went missing after receipt of a grand jury  
5 subpoena, the location of the logbook, the logbook that covers  
6 the time period of the pumping that we're talking about, and  
7 the time period when Robert Fields wasn't even working there.  
8 It's stuff documenting stuff that occurred before Robert Fields  
9 was even working for the City of Harlem.

10 That logbook was taken to City Hall for copying, the  
11 Administration Building. Robert Fields and Daniel Cason are  
12 carrying those documents into City Hall. So Robert Fields has  
13 it; it's in his car. And then from the moment from his car to  
14 where it was being copied by Jean Dove, the secretary, Renee  
15 Martin, and with Mr. Cason there, it never got there because,  
16 as Mr. Theodocion has indicated, Renee Martin and Jean Dove  
17 never saw that notebook. But we have the sworn testimony of  
18 Robert Fields that he had that notebook. That notebook was in  
19 his possession up until the moment when they got to City Hall  
20 and Daniel Cason and Robert Fields started carrying the  
21 documents up to City Hall.

22 So Mr. Theodocion is correct. We agree, there is no  
23 direct evidence. There is no security camera video of  
24 Mr. Cason slipping a logbook into his jacket or anything like  
25 that. But it's the same as, you have two individuals who walk

1 into a room. Somebody is holding an object. The lights go  
2 off. The lights come back on. The object is missing. Well,  
3 there's two people there. Where did it go? And so as a matter  
4 of a circumstantial case by a preponderance of the evidence,  
5 who has any motive to get rid of that logbook? Robert Fields,  
6 who this logbook didn't even cover the time period that he was  
7 there? Or Mr. Cason, whose logbook covers the time period  
8 where pumping was occurring? The Government's contention,  
9 where illegal pumping was occurring during that time period.

10 So as far as the record is concerned, we have the  
11 memos and the grand jury transcript. Mr. Fields is sitting out  
12 in the hallway with his attorney, Richard Allen. And so the  
13 Government says that it really comes down to Robert Fields'  
14 testimony. Because we have what Mr. Fields has said, and he  
15 has consistently said that he had that logbook for the years in  
16 question. There were two logbooks, one that we received in  
17 response to the subpoena and one that we never received.

18 Because, as Mr. Theodocion said, Robert Fields went  
19 back to Daniel Cason and said, where is that logbook? I was  
20 just down at grand jury and they were grilling me on where this  
21 missing logbook is. And I had it. And we went to City Hall  
22 together, and now it's gone. And Daniel Cason brings out some  
23 papers, and this part in the interview of August 13th, 2008,  
24 those papers that Mr. Cason showed to Robert Fields, Robert  
25 Fields looks at those and says, those aren't the same papers.

1 That's not the same logbook that I had in my hand in response  
2 to that subpoena, that I carried in my white Crown Victoria up  
3 to City Hall and that you helped carry that along. It wasn't  
4 the same documents. There are other documents that Mr. Cason  
5 said were a logbook.

6           So the logbook has never been found, your Honor. The  
7 logbook that Robert Fields went, in response to a subpoena, and  
8 pulled out of the wastewater treatment plant, put in his car,  
9 drove up in caravan fashion to City Hall to photocopy and  
10 unloaded with Daniel Cason. We admit that there's no direct  
11 evidence. But, your Honor, this is a case of circumstantial  
12 evidence where two people, one with a motive, one who doesn't  
13 have a motive because it covers stuff where -- how could he be  
14 criminally liable for what occurred in the time period covered  
15 in the logbook? -- and then the logbook disappears. That's  
16 what this issue comes down to, your Honor. Boiled down to the  
17 simplest terms.

18           The Government supports the probation officer's  
19 assessment of this. She's reviewed the grand jury transcripts.  
20 She reviewed all of these report, every sentence of them. And  
21 not every sentence was reviewed in the presentation to your  
22 Honor today. And so the Government submits that such an  
23 enhancement is appropriate.

24           THE COURT: Can I see those two memos that you're  
25 referring to?

1           Mr. Theodocion, do you have any objection?

2           MR. THEODOCION: I don't, Judge. I do want to say I  
3 don't think it's appropriate to, sort of, vouch for your  
4 evidence based on, well, a probation officer looked at all this  
5 stuff and she's made a determination; so, therefore, it  
6 bolsters what we're trying to say. I don't think that's an  
7 appropriate line of reasoning. But, absolutely, you can have  
8 those, your Honor.

9           THE COURT: Let me take a look at that a moment.

10          MR. STEWART: Yes, your Honor. Would you also like  
11 the grand jury transcripts that talk about his--

12          THE COURT: Please. Let me see that.

13          MR. STEWART: Your Honor, what I've handed up to you,  
14 just to save trips back and forth--

15          THE COURT: Okay.

16          MR. STEWART: -- to the bench, those are all the  
17 grand jury transcripts of the witnesses. Those are the grand  
18 jury transcripts that the defendant, the Government and the  
19 probation officer have been working off of. They have tabs on  
20 them on top of the two reports that Mr. Theodocion was reading  
21 from. And there was an index, I think, that shows the page  
22 numbers.

23          THE COURT: All right. What pages are you going to  
24 refer me to now?

25          MR. THEODOCION: Judge, we narrowed down to in the

1 June '08 deposition, Pages 32 through 34.

2 MR. STEWART: The month of the grand jury transcripts  
3 are at the bottom, at the bottom of the page.

4 THE COURT: So I now have the June '08 transcript for  
5 Mr. Fields. And you said go to Page 32?

6 MR. THEODOCION: Yes, your Honor. Thirty-two through  
7 34.

8 THE COURT: Thirty-two through 34. Okay. I see  
9 that. Thank you.

10 As it relates to the July '08 testimony, what page  
11 are you agreeing?

12 MR. THEODOCION: Judge, that was Page 33 through 41.

13 THE COURT: All right.

14 MR. THEODOCION: Actually, Page 33 just lines 1  
15 through 25, then Pages 37 through 41.

16 THE COURT: Go to Page 39. Let me get you to begin  
17 on Page 39 of this July 8th transcript beginning on Line 22.

18 My question is, where did you last see those  
19 notebooks?

20 Your answer was: I believe those notebooks were down  
21 at the waste treatment plant. And they're either at that waste  
22 treatment plant or the administrative office in Harlem.

23 Moving on to Line Seven.

24 Question: Do you recall seeing those notebooks 2002  
25 and 2003?

1           Answer: During all that, that rush, I thought I did  
2   see those notebooks. When we left out of here, I went back to  
3   look for those notebooks. I could not find those notebooks at  
4   all.

5           I guess my question is, that doesn't seem to be a  
6   hundred percent certainty to me.

7           MR. STEWART: Yes, your Honor. As Mr. Theodocion  
8   pointed out, at that point in the proceeding, Mr. Fields was  
9   getting quite nervous. He's out in the hallway, and he can  
10   talk about this. And he started to question, well, did I see  
11   that. He came in the month before, the day after he had that  
12   logbook in his hands, and he testified, I know I had those  
13   dates in question because I've thumbed through that notebook.

14           And then when he comes back and things are getting a  
15   little tense in the grand jury room as we're grilling them on  
16   that, he naturally gets a little nervous. We say, you need to  
17   get your own lawyer, advised him of his rights. He went out  
18   and got his own lawyer. He got a proffer agreement. We said,  
19   we just want to find out what happened to those logbooks.  
20   That's what we're after here, to find out what happened to  
21   those logbooks. So that's a crucial period of time in this  
22   investigation.

23           So he gets an attorney, sits down with EPA agent in  
24   August. So, June grand jury, July grand jury, and then August,  
25   and sits down in an interview setting and recounts through his



1 mind, as you read through that report, what happened. And  
2 based on the record in front of you, we believe that it's --  
3 that it is by a preponderance of the evidence that Robert  
4 Fields had that logbook. He had that logbook, went up to City  
5 Hall. And from the Crown Victoria to the City Hall, those  
6 documents which were carried in by Mr. Fields and Mr. Cason,  
7 that logbook disappeared. And Mr. Fields has gone everywhere  
8 and looked everywhere as you read from the reports. He can't  
9 find it anywhere. It disappeared. How?

10 And so we feel, the Government's position is that, in  
11 a circumstantial case, the conclusion that can be drawn by the  
12 proper standard of proof in this proceeding is that Mr. Cason  
13 caused them to disappear. I wish we had video camera. I wish  
14 we had surveillance tape. But we don't. And, unfortunately in  
15 life, that's how it is a lot of times. But, like I said,  
16 Mr. Fields is standing in the hallway if you have a question  
17 for him as to whether he had those logbooks.

18 THE COURT: I'd like to hear from him. Thank you.

19 MR. STEWART: All right. We can call Mr. Fields.  
20 Thank you.

21 THE CLERK: Please raise your right hand.

22 GOVERNMENT'S WITNESS, ROBERT FIELDS, SWORN.

23 THE CLERK: Please state your name for the record.

24 THE WITNESS: Robert Fields.

25 THE CLERK: Would you spell your last name.

1 THE WITNESS: F-i-e-l-d-s.

2 THE CLERK: All right. And what is your position?

3 THE WITNESS: Public Works Director for the City of  
4 Harlem, Georgia.

5 DIRECT EXAMINATION

6 BY MR. STEWART:

7 Q Good morning, Mr. Fields. My name is David Stewart.  
8 I'm an Assistant United States Attorney. We've met on prior  
9 occasions, correct?

10 A That's right.

11 Q In fact, you came before the federal grand jury in  
12 June of 2008, the day after you received a grand jury subpoena  
13 for various records and documents from the Harlem Wastewater  
14 Treatment Plant?

15 A That's correct.

16 Q And you testified before that grand jury in June of  
17 2008 and then came back in July of 2008?

18 A Yes, sir.

19 Q And then after testifying before the grand jury in  
20 July of 2008, you also sat down with an EPA agent, your  
21 attorney, myself, and talked about various issues that had been  
22 addressed in your grand jury transcript?

23 A That's correct.

24 Q And that occurred on -- over two days. It was a  
25 two-day -- on two separate occasions we sat down at the U.S.

1 Attorney's Office; is that correct?

2 A That's correct. That's right.

3 Q And you're aware that reports were created from those  
4 interviews that we had at the U.S. Attorney's Office?

5 A Yes, sir.

6 Q Mr. Fields, I'm just going to get right to it. We're  
7 talking today about some logbooks for the Harlem Wastewater  
8 Treatment Plant. You received a subpoena asking for the  
9 operator logbooks for the wastewater treatment plant from 2002  
10 through 2006, correct?

11 A That's correct.

12 Q How many logbooks did you find that covered that time  
13 period?

14 A I found two logbooks.

15 Q And how do you know that they covered the time period  
16 asked for in the subpoena?

17 A The dates on the logbooks themselves.

18 Q So you looked at the dates on the logbooks?

19 A Yes, sir.

20 Q So there were two logbooks that you found at the  
21 wastewater treatment plant?

22 A Right.

23 Q And what did you do with those logbooks after you  
24 found them at the wastewater treatment plant?

25 A We took those logbooks from the wastewater treatment

1 plant to the City administrative buildings in Harlem. And from  
2 there, we made copies of documents. Not sure if we made copies  
3 of the logbooks, of the 2002/2004 logbook. From there, they  
4 were loaded up in a box, then taken down, the next morning,  
5 taken down to Savannah.

6 Q When you say "we" took those logbooks and other  
7 records from the treatment plant to the administrative  
8 building, who is "we"?

9 A Myself and Daniel Cason.

10 Q And whose vehicle did you put the logbooks in?

11 A They were in my vehicle.

12 Q And you drove your vehicle up to the administrative  
13 building?

14 A Yes, sir.

15 Q And then did you and Mr. Cason carry in the documents  
16 from your car to the Administration Building?

17 A Yes, sir.

18 Q And did you ever see that logbook from 2002 to 2004  
19 ever again after that event?

20 A No, sir.

21 Q And you're certain you had a logbook for the years  
22 2002 to 2004 that day that you got that subpoena?

23 A Yes, sir.

24 Q And you're certain that you drove it up to the  
25 administration building?

1           A     Yes, sir.

2           Q     And you're certain that you've never seen it again  
3     since then?

4           A     Yes, sir.

5           Q     Have you looked diligently to find it?

6           A     Yes, we have -- yes, I have.

7           Q     Did you talk to Mr. Cason about where that missing  
8     logbook for 2002 through 2004 would be?

9           A     I did. When I got back from the grand jury down in  
10    Savannah, I said, we need to find that logbook.

11          Q     Did Mr. Cason give you any papers or something  
12    claiming that it was that logbook?

13          A     He said we had copies of that logbook that were  
14    confiscated by EPD in the past. I'm not sure -- I don't know  
15    the year.

16          Q     That was -- I'm sorry. That was before you were  
17    working for the--

18          A     That's right.

19          Q     -- treatment plant?

20          A     That's right.

21          Q     But if the logbook had been confiscated or taken by  
22    the EPD or anybody else before you got there, how could you  
23    have had it?

24          A     I remember seeing a 2002 and 2004 logbook.

25          Q     Did you get a chance to look at the documents that

1 Mr. Cason said was the logbook from 2002 to 2004?

2 A I did. I didn't do it in detail, but I did thumb  
3 through the documents.

4 Q Did those documents look like the logbook that you  
5 had in your hand--

6 A No.

7 Q -- the day that you got the subpoena?

8 A No, they didn't.

9 Q Yet he said that was the logbook?

10 A That's correct.

11 Q 2002 through 2004, were you working at Harlem  
12 Wastewater Treatment Plant?

13 A Started in August of 2004.

14 Q All right. The second logbook that you did actually  
15 bring down to the grand jury, that started in April of 2004,  
16 correct?

17 A That's correct.

18 Q And you're certain here today that you had a logbook  
19 in your hands the day you got that subpoena that covered the  
20 time period of 2002 through 2004?

21 A That's correct.

22 MR. STEWART: Your Honor, I think that goes right to  
23 the heart of the matter. Of course, if the Court has any  
24 questions for Mr. Fields -- let me ask this question.

25

1 BY MR. STEWART:

2 Q Did you get rid of that logbook for 2002 through  
3 2004?

4 A No, sir.

5 Q And the only other person that was with you carrying  
6 those documents into the administration building was Mr. Cason?

7 A Yes, sir.

8 Q Did you have your eye on Mr. Cason at all times--

9 A No.

10 Q -- when that was occurring?

11 A No, I didn't.

12 THE COURT: I have some questions. Then I'll let  
13 you, Mr. Theodocion.

14 QUESTIONS BY THE COURT

15 BY THE COURT:

16 Q Mr. Fields, thank you for coming today. You are  
17 absolutely certain that you took that logbook and put it in  
18 your Crown Victoria; is that correct? I don't want to put  
19 words in your mouth.

20 A From the treatment plant to the administrative  
21 building.

22 Q You are certain it was in your Crown Victoria?

23 A Yes, sir.

24 Q And when you arrived at the Harlem City Hall or  
25 administrative building, you and Mr. Cason unloaded your Crown

1 Victoria.

2 A I believe it was just me that unloaded the Crown Vic.

3 Q All right. So you're certain it went into the Crown  
4 Vic?

5 A Yes, sir.

6 Q And now your belief is that you are the only person  
7 that unloaded the Crown Vic?

8 A Right.

9 Q And you took the documents into the administrative  
10 building and placed them on the counter, who was in that  
11 administrative -- who was around the area where those documents  
12 were dropped off?

13 A Well, Renee Martin, the administrative assistant;  
14 Jean Dove, the City Administrator; Mr. Cason; and myself.

15 Q So you would bring documents in, lay them on a table  
16 or a counter; is that correct?

17 A Correct.

18 Q Then you would go back out to your car to retrieve  
19 more documents?

20 A Yes, sir.

21 Q So there were periods of time that you were not in  
22 the building, you were either going to or from your car and  
23 there was more than one person that would have had access to  
24 the documents you were bringing in?

25 A Yes, sir.



1           Q     Can you say unequivocally that no one else had the  
2     opportunity to take that operators log?

3           A     Could you repeat that question, sir.

4           Q     Are you absolutely certain -- because what you've  
5     just told me is that you were the person that brought the  
6     documents in from your car. You knew that log went into your  
7     car. You're the only person that brought those documents out  
8     of your car into the administration building for copying. Can  
9     you say with certainty that the only person that had access to  
10    that log while you were outside was Mr. Cason?

11          A     No, sir.

12          Q     You cannot?

13          A     No, sir.

14                THE COURT: Mr. Theodocion, do you have any  
15    questions?

16                MR. THEODOCION: I do, your Honor.

17                THE COURT: Thank you.

18                               CROSS-EXAMINATION

19    BY MR. THEODOCION:

20          Q     Good morning, Mr. Fields.

21          A     Good morning.

22          Q     Just briefly, could you just tell the judge, what is  
23    in those logbooks. What does a logbook mean?

24          A     The logbook, it's a book of daily happenings that we  
25    write down, things that happened during the day, the times.

1 Q Okay.

2 A Just from a -- whatever goes on at the treatment  
3 plant.

4 Q Okay. And none of the test work is in there?

5 A No, sir.

6 Q The test results?

7 A No, sir.

8 Q The type of reports like the fecal analysis, the TSS  
9 analysis, the BODs. All of those things that are furnished to  
10 the State of Georgia, those test records aren't included in the  
11 logbooks, are they?

12 A No, sir.

13 Q It's more of just, I showed up, I went around the  
14 perimeter at 9:00 a.m.?

15 A Yes, sir.

16 Q That kind of thing? Just things of your day. Who  
17 was there and, like you said, what you did; is that right?

18 A That's right.

19 Q And that's sort of a composition book; is it not?  
20 Sort of about the size of this, right?

21 A It's a notebook. Just a spiral bound notebook that  
22 we usually use.

23 Q Spiral bound. And this was May of 2008 when you got  
24 the subpoena, right?

25 A I'm not sure of the date.

1           Q     Okay. But do you -- you don't -- when I say May of  
2     2008, you don't dispute that, do you? Does that sound right to  
3     you? Summertime?

4           A     Yes, sir. Sometime in '08, I did get the subpoena.

5           Q     Okay. And Mr. Cason didn't have on a jacket or  
6     anything where he could have slid in a composition book, did  
7     he? He was wearing a shirt and pants, right?

8           A     I'm not -- I don't--

9           Q     Don't recall? Okay. But you did say you testified  
10    today that you are certain you saw that particular book,  
11    correct?

12          A     Yes, sir.

13          Q     Now, you did testify in front of the grand jury in  
14    July of '08 the second time. Do you remember that testimony?

15          A     Yes, sir.

16          Q     You were asked a question. This is on Page 40,  
17    counsel. The question was:

18                     Do you recall seeing those notebooks 2002/2003.

19                     And your answer was: During all that, that  
20    rush, I thought I did see those notebooks.

21                     Do you recall that answer?

22          A     I don't recall that, sir. It's been.

23          Q     You don't dispute that that was your answer though,  
24    do you?

25          A     I don't recall that.

1 Q Okay. It was a rush, wasn't it?

2 A Yes, sir, it was.

3 Q I mean, you had to be in Savannah the next morning,  
4 correct?

5 A Yes, sir.

6 Q And so you're in Harlem that afternoon. You've got  
7 to make all those copies. You've got to make arrangements to  
8 get down to Savannah the next morning. And you want to comply  
9 with that subpoena, don't you?

10 A Yes, sir.

11 Q I mean, when you're served with a subpoena that says,  
12 you have to have this, you have to have that, A, B and C, your  
13 concern at that point is, if I show up without these things,  
14 I'm going to be in trouble. Right?

15 A Yes, sir.

16 Q Okay. And so you get down there, and apparently you  
17 don't have the '02 through '04 logbook, right?

18 A That's correct.

19 Q And you tell the grand jury, hey, I had it yesterday.  
20 I thought I brought it with me. Right?

21 A Right.

22 Q And you told that you took the books from the plant  
23 in your vehicle to Jean Dove's office, right?

24 A That's right.

25 Q And Daniel was not in your car, was he?

1           A     No, he wasn't.

2           Q     And you just told the judge that you took the  
3 documents from your car into the City Administrator's Office,  
4 right?

5           A     Right.

6           Q     And you were never alone in there with Daniel, were  
7 you? I mean, Jean Dove and Beverly Martin, they were there the  
8 whole time, correct?

9           A     That's correct.

10          Q     And isn't it true that they were the ones that were  
11 really doing as far as most of the copying?

12          A     That's correct.

13          Q     And y'all were all in there together, right?

14          A     That's right.

15          Q     And I believe you indicated that the records were  
16 placed in a box and placed in an office in the Administrative  
17 Building that was shared by you and the mayor, correct?

18          A     That's correct.

19          Q     And you indicated that y'all left, everyone left,  
20 around 7:00 or 7:30, correct? Daniel didn't stick behind, did  
21 he?

22          A     I don't recall.

23          Q     I mean, in your interview, when you interviewed with  
24 Agent Carfagno in August, you said that all of y'all left,  
25 right?

1 A That's right.

2 Q And Daniel didn't have a key to that office, did he?

3 A No, sir.

4 Q So the next day you came, thumbed through the box,  
5 you believed everything was there. And you took it down to  
6 Savannah, correct?

7 A That's correct.

8 Q And we've heard testimony regarding a deposition that  
9 was given by Ted Stack in July of 2008. I realize July of 2008  
10 is a couple months after May of 2008. But there was civil  
11 litigation going on with Mark Vaughn well before the time of  
12 this grand jury subpoena; was there not?

13 A I'm not sure, sir.

14 Q Were you aware of the lawsuit that was--

15 A Yes, sir.

16 Q You were aware of the lawsuit that was dealing with  
17 Mr. Vaughn's work out at the wastewater treatment plant,  
18 correct?

19 A That's correct.

20 Q And as part of that lawsuit going back several  
21 months, had you been involved in the process of taking  
22 documents to and from your attorney's office, the City's  
23 Attorney's Office? Hadn't there been a process going on where  
24 documents were moving in and out?

25 A There might have been, but I wasn't involved in that.

1 MR. THEODOCION: That's all I have, Judge. Thank  
2 you.

3 THE COURT: Mr. Stewart, any followup?

4 MR. STEWART: No follow up for this witness, your  
5 Honor. If he may be excused unless the Court has any further  
6 questions for him.

7 THE COURT: No. He may be excused.

8 MR. STEWART: All right. You are free to go, Mr.  
9 Fields.

10 THE COURT: Thank you, Mr. Fields.

11 MR. STEWART: Your Honor, I realize there's been  
12 discussion regarding Jean Dove and Renee Martin. I also have  
13 those two reports of their interviews regarding the handling of  
14 the photocopying on the day in question. I believe  
15 Mr. Theodocion has referenced that, and we're okay submitting  
16 this to your Honor also.

17 THE COURT: Go right ahead. Sure. Anything else?

18 MR. THEODOCION: No, your Honor.

19 THE COURT: The Court is now considering the  
20 defendant's objection, which is Number Eight in the addendum to  
21 the Presentence Report, as to Paragraphs 19 through 22 and 30;  
22 specifically, the two-point adjustment for obstruction of  
23 justice under Sentencing Guidelines Section 3C1.1. The Court  
24 notes that the language of that particular adjustment guideline  
25 says that:

1           If the defendant willfully obstructed or impeded, or  
2     attempted to obstruct or impede, the administration of justice  
3     with respect to the investigation, prosecution or sentencing of  
4     the instant offense of conviction, and the obstructive conduct  
5     related to the defendant's offense of conviction and any  
6     relevant conduct or a closely related offense, increase the  
7     offense level by two levels.

8           Now, again, the Court notes that in this particular  
9     case the standard to be applied is the preponderance of  
10    evidence, which generally means enough evidence to make it more  
11    likely than not that the fact sought to be proven is true. The  
12    Court has reviewed grand jury testimony transcripts from June  
13    of 2008 and July of 2008 as it relates to the testimony of  
14    Mr. Robert Fields, an operator at the Harlem Wastewater  
15    Treatment Plant. The Court has also listened to live testimony  
16    offered by Mr. Fields. And the Court, in fact, questioned  
17    Mr. Fields as to certain issues related to the misplacement of  
18    the operator logs for the years of 2002, 2003 and through April  
19    of 2004.

20           The Court has also reviewed memos prepared by the  
21    Criminal Investigation Division of the United States  
22    Environmental Protection Agency as it relates to conversations  
23    with Ms. Renee Martin, an administrative assistant for the City  
24    of Harlem, Georgia and Ms. Jean Dove, City Administrator for  
25    the City of Harlem, Georgia, relating to their knowledge of the



1 assembling and copying of various documents covered by the  
2 grand jury subpoenas, which would include the operator logs  
3 identified and which are the subject of this objection and this  
4 proposed adjustment.

5           The Court is concerned that, while Mr. Cason may have  
6 been present during the assembling and the transport of these  
7 documents, there were others also present. Mr. Fields in his  
8 live testimony and in response to questions by the Court noted  
9 that the documents were taken from the wastewater treatment  
10 plant and loaded into his Crown Victoria automobile, which he  
11 alone drove to the City Hall or City Administrative Building.  
12 His testimony was that he unloaded the car and delivered the  
13 documents into the office.

14           His testimony was, though, that there were others  
15 present in that office while the documents were been unloaded,  
16 including Mr. Cason. And that he could not say with certainty  
17 that only Mr. Cason would have access to those documents inside  
18 the City Hall. Clearly, other people had an opportunity to  
19 have access to those operator logs during the time that  
20 Mr. Fields was in and out of the building, unloading the car,  
21 his car rather, and delivering those documents into the  
22 Administration Building.

23           Therefore, the Court believes that there is no  
24 evidence that Mr. Cason willfully obstructed or attempted to  
25 obstruct or impede this investigation by hiding those

1 documents. The fact is, he was present, but so were others.  
2 The fact is that he did have the opportunity to do it, but so  
3 were others.

4 Therefore, based on these findings, it is the Court's  
5 conclusion that the adjustment for obstruction of justice, the  
6 two-point enhancement under Sentencing Guideline 3C1.1 as set  
7 forth on Item 30 or Paragraph 30 of the Presentence Report is  
8 not appropriate in this case and therefore, the Court will  
9 uphold the objection by the defendant and will order that that  
10 adjustment be struck from the calculation of the sentencing  
11 guidelines.

12 Mr. Theodocion, next.

13 MR. THEODOCION: Yes, sir, Judge. Judge, would it be  
14 possible for us to take about a five-minute break at this  
15 point?

16 THE COURT: That will be fine. I tell you what,  
17 we'll start back at 10:35.

18 MR. THEODOCION: Thank you, your Honor.

19 (AFTER RECESS)

20 THE COURT: Mr. Theodocion, if I'm correct, that now  
21 leaves us with your final objection. Is that correct?

22 MR. THEODOCION: That is correct, your Honor.

23 THE COURT: All right. Go right ahead.

24 MR. THEODOCION: And, Judge, I am going to call a  
25 witness shortly. And I would ask, and my understanding is that

1 the Government does not intend to call any witnesses, but I  
2 would ask, out of an abundance of caution, if someone might  
3 possibly be called, I would ask to invoke the Rule at this  
4 point.

5 THE COURT: That will be fine.

6 Any objection, Mr. Stewart?

7 MR. STEWART: The only person I think, live person, I  
8 think we have here is our case agent. And typically a case  
9 agent does not--

10 MR. THEODOCION: That's fine, your Honor.

11 THE COURT: Is that okay?

12 MR. THEODOCION: Yes, sir.

13 MR. STEWART: And by the way, we'll be offering our  
14 testimony through the grand jury transcripts that  
15 Mr. Theodocion and I have agreed upon and which are on your  
16 bench, your Honor.

17 THE COURT: Very well. So there's no other witness  
18 other than the case agent, correct, in the courtroom?

19 MR. STEWART: As far as the government is concerned,  
20 yes, your Honor.

21 THE COURT: Okay.

22 MR. THEODOCION: All right. Judge, at this point,  
23 and I don't recall my numbering system, but we're at my  
24 objection that deals with the six-level increase and the  
25 four-level increase. And I'm looking at the Presentence

1 Report, Paragraph 16, where it's alleged that on or about  
2 January 29th, 2004, he caused the discharge of a pollutant (raw  
3 sewage and wastewater) from a point source, which was a hose  
4 connected to a pump, which pumped into the tributary of the  
5 Eucree Creek without a valid permit. And it's kind of  
6 semantics. Without a valid permit or in violation of a permit.  
7 But it kind of both means the same thing in this case.

8           Your Honor, I do think it's important to note at the  
9 outset there is a distinction. And if you look -- I mean, it's  
10 obviously in the Clean Water Act but in the guidelines as well.  
11 2Q1.2 deals with Hazardous or Toxic Substances. And we're  
12 operating under 2Q1.3, which is Other Environmental Pollutants.  
13 The alleged pollutants we're dealing with are things that you  
14 are allowed to discharge; ergo, the entire permit process, with  
15 certain conditions and requirements, of course.

16           But the City of Harlem, your Honor, via State of  
17 Georgia Permit 20389 is authorized to discharge under the  
18 National Pollutant Discharge Elimination System into those  
19 receiving waters. So they have a permit to discharge. But as  
20 a condition of this permit, of course, there is a multitude of  
21 requirements as to the monitoring of the effluent which leaves  
22 the facility. You know, the daily, and weekly and monthly test  
23 work that has to be done. The reports that have to be filed in  
24 Atlanta.

25           And, frankly, to a layperson this is just incredibly

1 confusing and makes no sense, how they use terms such as the  
2 arithmetic means for values. And it's just very complicated.  
3 That's just how it is. I don't really understand it, but  
4 you've got to test, and you've got to retest, and you've got to  
5 document, and you've got to send that up. So to have a permit,  
6 basically, this is the State saying, you can't sue the City of  
7 Harlem because under these conditions, they have a right.  
8 We're going to give them a right to discharge pollutants into  
9 the environment, which, of course, they would never do for  
10 hazardous or toxic substances.

11 So I do think it's important to put this in context,  
12 the type of substances we're dealing with. Particularly when  
13 you look at 2Q1.3 Subsection (b)(1), the (b)(1)(A) states that:

14 If the offense resulted in an ongoing, continuous, or  
15 repetitive discharge, release or emission of a pollutant into  
16 the environment, increase by six levels.

17 If you look at the Application Note Four, it  
18 indicates that that subsection assumes the discharge or  
19 emission into the environment resulting in actual environmental  
20 contamination. And one thing that is not going to be present  
21 here, your Honor, is any evidence whatsoever of any test work  
22 done or any determination as to any contamination whatsoever.  
23 And so I think that's important as we look at the six-level  
24 increase on (b)(1).

25 The four-level increase is under Subsection (b)(4)

1     where it indicates:

2             If the offense involved a discharge without a permit  
3     or in violation of a permit, increase four levels.

4             And before presenting testimony, Judge, I do think  
5     the argument is to be made that in this particular case it  
6     would be something of a double count, or maybe that's the  
7     improper term, but just an incorrect count to hit him both  
8     ways. Because, you know, if I go out and discharge these  
9     pollutants in the environment, they're going to get me with a  
10    six-level increase. I'm not allowed to. This plant can  
11    discharge those pollutants. It just has to do it according to  
12    its permit. It can't discharge without doing the test work,  
13    without running it through the machine, without doing all the  
14    processes that are required by the permit and that are required  
15    under State and Federal law. And so they have a right to  
16    discharge as long as it's done in accordance with the terms and  
17    conditions of its permit.

18            And so this particular discharge, that as director of  
19    the plant was authorized, would more appropriately be deemed a  
20    discharge in violation of the permit as opposed to a situation  
21    where you would say, well, you don't have a right to discharge  
22    at all.

23            In any event, Judge, I do want to call our first  
24    witness, that being said, Mr. Todd Baldwin. And while  
25    Mr. Baldwin is coming up, Judge, you can see we've turned on

1 the monitors. We're fortunate in this case that the  
2 January 29th incident was videotaped. And so we actually have  
3 the actual occurrence which forms the basis of those ten  
4 combined levels.

5 DEFENSE WITNESS, TODD BALDWIN, SWORN.

6 THE CLERK: Please state your name for the record.

7 THE WITNESS: Todd Baldwin.

8 THE CLERK: And what is your position?

9 THE WITNESS: I'm project manager with ESG  
10 Operations.

11 THE CLERK: Would you spell your last name.

12 THE WITNESS: B-a-l-d-w-i-n.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. THEODOCION:

16 Q Mr. Baldwin, how are you currently employed?

17 A Excuse me?

18 Q How are you currently employed?

19 A I work with ESG Operations. I am a project manager.  
20 We go around, contract our services to operate, maintain water,  
21 wastewater, public works facilities.

22 Q And where are you located at this time?

23 A I am in Florida.

24 Q What sort of training and certificates do you have in  
25 water, wastewater treatment and management?

1           A     I have a Class I water certificate, a Class II  
2     wastewater certificate. Both of those are in Georgia. And I  
3     have a Class B Florida wastewater certificate.

4           Q     And for how many years now have you worked in this  
5     field?

6           A     Since 1993.

7           Q     And during that time, were you ever employed at the  
8     Harlem Wastewater Treatment Plant?

9           A     Yes, sir.

10          Q     When was that?

11          A     I believe I started 2002, left in 2004. Somewhere in  
12     that area. I remember leaving in July of 2004.

13          Q     Okay. And so you were continuously employed during  
14     that time?

15          A     Yes, sir.

16          Q     And so you were employed on or about January 29th,  
17     2004?

18          A     Yes, sir.

19          Q     Just briefly, can you describe what that plant does,  
20     how it operates, what it takes in and what it puts out.

21          A     It receives domestic wastewater, and that's basically  
22     any wastewater from any household facility. It's an SBR system  
23     which is a sequencing batch reactor. They work in sequence,  
24     hence the name, sequencing. They receive the flow. All the  
25     treatment process happens in one container. And once that is



1 done, all your solids are pretty much settled to the bottom.  
2 Your clean water is decanted off the top, run through a series  
3 of chlorine sulfur dioxide, kill bacteria, kill chlorine before  
4 it's discharged into the system.

5 Q Okay. And while the water is, sort of, out there and  
6 waiting to be treated, you keep it moving, don't you?

7 A Yes, sir. I mean, while it's in the reactors  
8 themselves, they're continuously being aerated, mixed, settled.  
9 It goes through a process. Like I said, one receives. The  
10 other one is doing its treatment. When this one starts  
11 receiving, the other one starts doing its treatment.

12 Q On January 29th, 2004, what was the status of the  
13 treatment plant? Was it operating to full capacity?

14 A As far as my knowledge, yes, sir. I mean, we were  
15 receiving wastewater in. It was going directly to the SBRs.

16 Q I'm referring specifically to the time period in  
17 which you had the basin that was being worked on by Mr. Vaughn.

18 A Oh, the actual pond was not in operation, no, sir.

19 Q What is the pond?

20 A The pond is more for a pretreatment process. It is  
21 to get rid of any non-biologicals that cannot be broke down in  
22 the SBRs. Woods, tennis shoes. Anything that comes through  
23 the sewer system that cannot be broken down. It is actually  
24 put there in that pond.

25 Q Okay. And you just keep the water moving, allow

1 those things to settle down?

2 A Yes, sir. You can keep it in that pond for as short  
3 of time as two hours to two months. Depending on how much you  
4 want to settle out and how much you want to bring back to the  
5 plant.

6 Q Okay. And on January 29th of 2004, what was the  
7 status of that pond?

8 A It was nonoperational. It was not receiving sewage  
9 whatsoever.

10 Q Okay. Do you recall for how long that had been the  
11 case?

12 A No, sir. It was like that when I started, and I know  
13 it had been like that prior to my employment.

14 Q And you indicated you started in 2003. Did you give  
15 a month or approximate month?

16 A I remember starting close to Memorial Day. But like  
17 I said, I can't remember if I was there a year or two years.

18 Q Conservatively, by June of 2003, you were employed?

19 A Yes, sir.

20 Q Okay. And during that time, during the seven months  
21 until the 29th, that pond had not been used; is that correct?

22 A Yeah. The pond had not received any sewage  
23 whatsoever.

24 Q What type of work was being done to that pond?

25 A When I became employed by the City of Harlem, a

1 contractor was on site trying to remove the sludge, remove all  
2 the dirt. There was a dirt dam that had been put in the middle  
3 of the bond. Their job was to move that and get the pond ready  
4 for a clay liner to be installed.

5 Q Okay. And what is the purpose of the clay liner?

6 A To keep any of the sewage from reaching into the  
7 ground, the soils.

8 Q And was that, the contractor, was that Ridge  
9 Environmental?

10 A Yes, sir. I believe that was the name. Yes, sir.

11 Q How was work going moving towards January of 2004?  
12 Were there problems out there at the site?

13 A I know initially when I first started, the first  
14 month, maybe two months, they spent more time working on the  
15 equipment than they did the pond. I do remember that. They  
16 had a lot of problems with their equipment. Once they got  
17 going, they started working. I don't think any of us really  
18 understood what his concept was. But he had -- he actually was  
19 out there working on and off, bringing in woodchips, mixing  
20 stuff in. Trying to, I assume, get the sludge into a more  
21 solidified base to pull it out of the pond.

22 Q Was he having trouble keeping the pond dry?

23 A Yes, we were.

24 Q And what was causing that?

25 A Once he got certain areas -- at first, it was a

1 pre-conclusion that we were receiving a lot of ground water,  
2 seeping up through the pond, running off the hill. Rainwater.  
3 We had a lot of significant rain events. Once he got one area  
4 of the pond clean, we could actually see where the liner was  
5 not existent. Water was filtering in from around the edges of  
6 the pond from, we assumed, underground springs.

7 Q So underneath the pond, you had water coming up  
8 through the ground?

9 A Yes, sir. It was coming up in several places around  
10 there.

11 Q And what was done to try to alleviate that problem?

12 A At that point in time, Ridge Environmental discussed  
13 and got with the City and we put in a french drain system  
14 around the pond.

15 Q Okay. And that took water from the pond to where?

16 A Yes, sir. It was in hopes of, putting the french  
17 drain where they did, it would alleviate any more water from  
18 entering the pond than what could be. And it did alleviate  
19 some. I mean, it alleviated a good bit.

20 Q And it took water that possibly would have come into  
21 the pond and took it into that tributary--

22 A Yes, sir.

23 Q -- of the creek? And that ran alongside the fence;  
24 is that right?

25 A Yes, sir.

1           Q     Okay. You mentioned they were having rainwater. Was  
2     that a problem?

3           A     Yes, sir. Any time it rained, it would build up in  
4     the pond. It would hold. The pond was kind of sitting in a  
5     hole area. So any time it rained on the upper side of the  
6     pond, it all ran into the pond.

7           Q     Okay. And on or around the time of January 29th,  
8     2004, were you ever having sewage back up into the pond?

9           A     I don't remember the exact dates.

10          Q     Do you ever recall that happening? Do you ever  
11     recall sewage backing up into that pond?

12          A     I saw sewage back up -- I don't want to say back up.  
13     But I actually saw sewage at the headworks structure, or,  
14     excuse me, the effluent structure of that pond on three  
15     different occasions. Initially, when I first started the work  
16     all the sewage was there that had been there from the beginning  
17     that they were trying to pump out.

18          Q     And this is in the summer of '03 that you're talking  
19     about?

20          A     Yes, sir. And then the second time was they were  
21     trying to determine if there was a blockage in that line that  
22     sent the pond -- how it was designed to send the water from the  
23     pond to the SBRs. And we brought in a jetter machine and  
24     jetted water through there trying to alleviate a blockage.  
25     When we did that, it was hard to tell if that was actually

1 sewage coming back down the line or actually the jet water we  
2 were using cleaning out the line.

3 Q And there was a third time?

4 A The third time was a secondary contractor who came in  
5 to replace the liner. While they were removing clay around in  
6 the pond, they actually hit one of the lower valves on that  
7 structure. When they did, a small amount of sewage actually  
8 spilt out of that structure. Best guess, probably a 10-foot  
9 diameter area. And that was all that came out of it.

10 Q Those three different occasions, were those the only  
11 times that you're aware that sewage came into the pond?

12 A That's the only times I remember it being an issue or  
13 I remember seeing it myself. Yes, sir.

14 Q You worked out there every day; did you not?

15 A From about October of '03 until the time I left.

16 Q From October '03 until July of '04, you were out  
17 there pretty much every day Monday through Friday?

18 A Yes, sir.

19 Q And those three occasions, what was the most amount  
20 of sewage that found its way into the pond?

21 A As far as I knew, none. I mean, as far as my best  
22 knowledge.

23 Q Not other than those three, I'm sorry. But those  
24 three times?

25 A Those three times?

1           Q     Yes.  What's the most amount of sewage that you came  
2     into that what you call more of a basin at this point than a  
3     pond, right?

4           A     I mean, it wasn't enough to fill the pond up or to  
5     even put enough on the bottom to cover the complete bottom of  
6     the pond.

7           Q     Okay.  We're going to show a video, Mr. Baldwin.  If  
8     you could tell the judge.  This is, in fact, the Harlem  
9     Wastewater Treatment Plant; is it not?  The facility?

10          A     Right here on this monitor?

11          Q     Can you see that?

12          A     Yes, sir.  Yes, sir.  That looks about like the -- to  
13     the top, left corner looks like the effluent structure of the  
14     pond.

15          Q     Okay.  And looking out to the right, what looks like  
16     that big hole, is that the basin that was the--

17          A     Yes, sir.

18          Q     Once it would be repaired would be the pond?

19          A     Yes, sir.

20                                 (Video plays while questions are asked)

21          Q     What are those posts that are in the ground there?

22          A     Those are actually posts that are supposed to hold  
23     the aerators in place.  Aerators are supposed to be set in the  
24     pond to keep your DO levels in the pond.

25          Q     Those little small patches of wetlands you see; is

1 that rainwater?

2 A At that time I would assume, yes, sir, it was  
3 rainwater. Yes, sir.

4 Q There were, in fact, two pumps at different points  
5 and times that were placed in that basin, correct?

6 A Yes, sir. When I -- initially, during the  
7 construction of our -- the phase that Ridge Environmental was  
8 involved in, they actually had a deasil pump in the pond  
9 itself, and they were dewatering.

10 Q Okay. Now, we're starting to see on the right part  
11 of the screen here, there's a pump in the basin. Is that the  
12 electric pump? You can see the blue pipe going up the hill?

13 A Yes, sir. That looks like an electric pump. Yes,  
14 sir.

15 Q And the water there that is being pumped. What was  
16 the cause of that water?

17 A At the time of that pump being in there, the majority  
18 of water that was in there, if I remember, was rainwater and  
19 groundwater. We didn't see anything back up through the pond  
20 itself.

21 Q Did you consider that water to be a pollutant or  
22 contaminated at all?

23 A At that time, no, sir.

24 THE COURT: May I ask a question.

25 MR. THEODOCION: Yes, sir.



1 (Video paused)

2 THE COURT: Why would you not consider that water a  
3 contaminant at the time?

4 THE WITNESS: At the time, we were under the  
5 assumption that it was nothing but rainwater and groundwater  
6 that seeped up through the pond. We had not seen any sewage  
7 received in the pond. The actual inlet for the pond was no  
8 longer in use. And at the time, I don't remember seeing the  
9 voluminous amounts of wastewater come through from the effluent  
10 structure that people had kept saying was coming through.

11 THE COURT: Wouldn't there just be, by virtue of the  
12 fact that that was an existing pond, just some residual  
13 contamination in the soil that would be picked up in the water?

14 THE WITNESS: That could be said, yes, sir.

15 THE COURT: Okay. So it could have happened?

16 THE WITNESS: As in, where the water came from?

17 THE COURT: I'm just saying, you've got an existing  
18 pond where it previously had sewage in?

19 THE WITNESS: Yes, sir.

20 THE COURT: The fact that it was dry, the fact that  
21 the rainwater was on top of it, is there some residual  
22 contaminant lying around in the soil from previous--

23 THE WITNESS: That is possible, yes, sir.

24 THE COURT: -- activity?

25 THE WITNESS: That is possible.

1           THE COURT: So that could have been in that water.  
2 I'm just asking. There could have been some contaminant in  
3 that water from the residual that might have been lying around  
4 in the basin of that pond?

5           THE WITNESS: I could say yes that could be true.  
6 But without testing it -- I'm not a soil analyst. So I  
7 wouldn't feel safe to say yes or no on that question.

8           THE COURT: I understand. Thank you.

9                                 (Video resumed)

10 BY MR. THEODOCION:

11           Q     Mr. Baldwin, the water that is coming out of that  
12 pump; do you see that there?

13           A     Yes, sir.

14           Q     You've seen a lot of raw sewage in your day, haven't  
15 you?

16           A     Yes, sir.

17           Q     That appear to be raw sewage to you?

18           A     No, sir.

19           Q     I mean, does that look more like groundwater or  
20 rainwater?

21           A     It's a lot clearer than most raw sewage I've seen.

22           Q     Yes, sir. And that water is flowing, it must be just  
23 a slight hill down towards that fence, right, once it leaves  
24 the pipe?

25           A     Yes, sir. I believe where the water actually came

1 out of the fence is pretty close to where the french drain  
2 system was put in.

3 Q Okay. That deterioration that we see on or about the  
4 middle of the screen there, was that caused by that electric  
5 pump pumping water or did something else cause that?

6 A I can't remember if the pump had caused that or if  
7 that was actually where it just started caving in from where  
8 the french drain was put in. Because I remember in the area  
9 where that pump was running out of was real close to where the  
10 trench made for the outlet of the french drain went up under  
11 the fence. And I know during that time, when they got done, we  
12 were having a lot of problems with erosion in that area. We  
13 were actually getting hay bales to put down and try and avoid  
14 any more being washed away than what had been washed away.

15 Q Okay. I believe on this video you may be able to  
16 point out to where the french drain is flowing water. Is that  
17 down below that there?

18 A I remember the french drain was pretty deep in that  
19 area. I mean it was eight foot plus in that area if I remember  
20 correctly.

21 (Video played until end)

22 BY MR. THEODOCION:

23 Q So Mr. Baldwin, you were at the plant after that day  
24 you just saw on the tape, January 29th, 2004, you were there  
25 for approximately another five and a half, six months, right?

1     Until July?

2           A     To the 1st of July.

3           Q     Okay. And was there any test work done whatsoever on  
4     that water that had built up in the pond in that spot?

5           A     No, sir, not to my knowledge there wasn't.

6           Q     Was there ever any test work done on the water that  
7     was coming through the french drain or down below there to see  
8     if there was any contamination whatsoever?

9           A     No, sir, not to my knowledge. Not any biological  
10    testing, no, sir. I know we did flow testing on the french  
11    drain to kind of determine how much was coming through.

12          Q     And the times that, the limited times where either  
13    sewage or wastewater came into that pond, did it ever make it  
14    over to that area where we saw the electric pump?

15          A     I never saw it. In the initial phase, it was all in  
16    the pond. But once they got to the point that they had cleaned  
17    out all the woodchips and were getting ready to remove the  
18    liner, I don't ever remember seeing sewage get to that end of  
19    the pond. Most of it, if any came out, it conglomerated around  
20    the effluent structure.

21               MR. THEODOCION: That's all I have, Judge.

22               THE COURT: Thank you.

23               Mr. Stewart.

24               MR. STEWART: Thank you, your Honor.

25                               CROSS-EXAMINATION

1 BY MR. STEWART:

2 Q Good morning, Mr. Baldwin. My name is David Stewart.

3 We've met before, haven't we?

4 A Yes, sir.

5 Q Do you recall where that was?

6 A Grand jury in Savannah.

7 Q That's the only time we've ever talked before,  
8 correct?

9 A As far as I know, yes, sir.

10 Q And there was a court reporter there taking down your  
11 testimony; do you recall that?

12 A Yes, sir.

13 Q Did you know the folks that worked at the plant  
14 before you got there, Mr. Carroll or a Pittman?

15 A I knew of Mr. Carroll and knew somewhat before.  
16 Excuse me. He ended up being my neighbor either while I was  
17 working for Harlem or after I had left Harlem.

18 Q But you knew that he worked at the plant before you  
19 worked there?

20 A Yes, sir.

21 Q All right. And then while you were working there,  
22 did you know a Mr. Sylvester Bush?

23 A Yes, sir.

24 Q Who was Mr. Bush?

25 A We actually brought him in to train him at the

1     wastewater plant.

2           Q     How about a Wayne Davis?

3           A     Yes, sir.

4           Q     He worked there while you were there?

5           A     He was actually there prior to me getting there.

6           Q     A Mr. Paine?

7           A     He was also employed there prior to my arrival.

8           Q     But you're aware of all of these individuals?

9           A     Yes, sir.

10          Q     That they worked there and worked around this pond  
11     that we were just looking at today?

12          A     Yes, sir.

13          Q     Okay. Now, you just testified today that the pond  
14     was supposed to be offline?

15          A     Yes, sir. It was not supposed to receive any sewage.  
16     Yes, sir.

17          Q     But it did get sewage on certain occasions?

18          A     Yes, sir. Like I said, the three times that I  
19     recollected it came out of the effluent structure.

20          Q     You have three specific recollections of sewage  
21     getting into that pond which was supposed to be offline?

22          A     Yes, sir.

23          Q     And you were saying that was at the top end of the  
24     pond that you saw the sewage, correct?

25          A     Yes, sir.

1           Q     And then you were saying that, you know, there was  
2     some rain like we always have in Georgia during this time  
3     period that we're talking about, right?

4           A     Yes, sir.

5           Q     And the rain would fall, you were testifying how the  
6     rain would fall at the top and kind of wash down through the  
7     pond because the gradation of the pond?

8           A     I was saying it would, on the opposite side of the  
9     effluent structure, the land is actually taller. And it slopes  
10    off toward the plant, towards the swamp in there. And that's  
11    usually where the run to.

12          Q     Water goes downhill, right?

13          A     Yes, sir.

14          Q     Okay. We agree about that. And the sewage that you  
15    saw on those occasions was at a higher elevation. When the  
16    rainwater comes down, and rain goes downhill to the bottom part  
17    of the pool?

18          A     If it is higher or lower, I would say yeah. Water is  
19    going to flow downhill, yes, sir.

20          Q     And then you saw a pump in the pond at the bottom end  
21    of the pond, right?

22          A     Yes, sir.

23          Q     And that pump then pumped it out, was pumping out  
24    liquid. And you don't know what was in that liquid, correct?

25          A     As far as testing, no.

1 Q Okay.

2 A We remember the pond being somewhat dry, and then  
3 having rain events. And every time we do, water comes out of  
4 the ground everywhere up there.

5 Q And if I may direct your attention back to the video.

6 MR. STEWART: And, Mr. Howell, may I turn on the  
7 audio system? Well, I'll just take this microphone right here.  
8 This works.

9 (Segment of video replayed and paused)

10 BY MR. STEWART:

11 Q That structure that we just saw, is that the influent  
12 structure?

13 A That's the effluent. That's where the pond actually  
14 drains out of into the SBRs.

15 Q Into the SBRs.

16 A Yes, sir.

17 Q And so that's where sewage, when the pond is online,  
18 that's where the sewage comes into the pond?

19 A That's where -- no, sir. That's not where it comes  
20 into the pond. That's where it leaves the pond.

21 Q That's where it leaves the pond. Where does the  
22 sewage come into the pond?

23 A The opposite side of the pond. It's actually in the  
24 video. You'll see it. There's a pipe that comes into the pond  
25 about halfway. I would say in the middle of the pond, on the



1 edge of the middle, I guess you could say.

2 Q And that's where, as you testified today, you saw  
3 sewage come out of that on--

4 A No, I've never seen sewage come out of that pipe.  
5 That pipe was offline.

6 Q Okay. But you did see sewage come into the pond  
7 through the--

8 A The effluent structure.

9 Q -- this structure that we just saw?

10 A Yes, sir.

11 Q Okay.

12 (Segment of video replayed and paused)

13 BY MR. STEWART:

14 Q All right. In that footage there, do you see a large  
15 pump?

16 A Yes, sir.

17 Q And what pump was that?

18 A That was a pump they had used in the beginning while  
19 they were getting the woodchips out. Any time water would come  
20 into the pond, they would turn that pump on.

21 Q When you say "they," are you talking about the  
22 contractors?

23 A Yes, sir, Ridge Environmental. Whoever was there at  
24 the time.

25 Q Where were they pumping that? Where was that pump

1 directing the liquid to?

2 A I want to say it was a pump directly to the  
3 headworks, to the beginning of the plant.

4 Q And explain how this plant works because you were  
5 talking -- is the headworks where the sewage comes into the  
6 plant?

7 A Yes, sir. That's the actual beginning of the  
8 treatment facility.

9 Q So when sewage comes in from the City, it comes in  
10 through the headworks, then it's treated, and then it goes out  
11 treated, cleaned up, it goes out. What do you call it where it  
12 goes out?

13 A Our outfall.

14 Q Outfall. So is it fair to say that the stuff coming  
15 into the plant is called influent?

16 A Yes, sir. It's influent and effluent.

17 Q And effluent is what goes out?

18 A Yes, sir.

19 Q So we have our terminology straight. So the  
20 contractors were pumping the water that was in that pond to the  
21 headworks, and then that water was getting treated through the  
22 plant?

23 A Yeah, initially, yes, sir.

24 Q And why would they -- why would they pump that water  
25 to the headworks?

1           A     My assumption was, the amount of water that was in  
2     the pond when they started, they were making sure it was not  
3     raw sewage in the pond.

4           Q     Because you need to treat that kind of stuff?

5           A     Yes, sir.

6           Q     And it goes up to the headworks.

7           A     Yes, sir.

8                                 (Segment of video replayed and paused)

9     BY MR. STEWART:

10          Q     And that building right there, is that where y'all  
11     work? Is that the--

12          A     Yes, that building is the main office. That's the  
13     lab and office.

14          Q     Okay. You see that water down there in that pond?

15          A     Yes, sir.

16          Q     You don't know what that water is?

17          A     At this time, no. I mean, we assumed it was  
18     groundwater or rainwater.

19          Q     Your assumption?

20          A     Yes, sir.

21          Q     Because it rains in Georgia and there's groundwater  
22     in this area.

23          A     Yes, sir.

24          Q     Can you tell what it is looking at the color of it?

25          A     No, sir.

1           Q     But when you see it coming out of the pipe, you  
2 testified that it looked pretty clean to you?

3           A     Yes, sir, it did.

4           Q     Are you familiar with the concept of aeration?

5           A     Yes, sir.

6           Q     For regular folks, if I took a garden hose and, you  
7 know, stuck my thumb on it, and turned the water on, and it  
8 sprays out, that water is being aerated?

9           A     Yes, sir.

10          Q     And it looks pretty clean because air is being added  
11 into it?

12          A     Yes, sir.

13          Q     That's different than standing water?

14          A     You're correct. Yes, sir.

15          Q     And something that looks one color when it's  
16 standing, when you spray it out of a hose or you aerate it, it  
17 can look a different color?

18          A     Yes, sir.

19          Q     And just by looking at the color of something, you  
20 can't tell whether it's clean or unclean water, correct?

21          A     No, sir. You're correct.

22          Q     I mean, there's a lot of clear things that you  
23 wouldn't want to drink because it could be harmful to you?

24          A     That is correct.

25               MR. STEWART: One moment.

1 BY MR. STEWART:

2 Q All right. Just continuing on, real quick.

3 (Segment of video replayed and paused)

4 BY MR. STEWART:

5 Q Do you recognize the voice on this? Can you hear it  
6 up there?

7 A No, sir. I can't hear it well enough to--

8 Q Okay. I apologize for that.

9 (Segment of video replayed and paused)

10 BY MR. STEWART:

11 Q Had you seen that pump in that pond before this day?

12 A It was in there for a few days.

13 Q And it pumped on more occasions than this occasion,  
14 correct?

15 A Yes, sir. I can't remember if it was two or three  
16 days. But it was there for a few days.

17 Q So multiple pumping occurring with this pump?

18 A Now, whether or not it pumped all those days, I could  
19 not tell you. But I do know it was there.

20 Q Who was responsible for handing this pump of the  
21 folks you were talking about working there at the plant?

22 A If I remember correctly, during this time we were  
23 doing a lot of running around, cleaning up. If I remember  
24 correctly, it was Sylvester Bush was involved in either, I  
25 believe, it was electric pumps that had to be plugged in. If I

1     remember correctly, he was the one who was supposed to be  
2     plugging in or unplugging it. Make sure that it didn't run all  
3     night or all day.

4           Q     Who directs Sylvester Bush? Who was his boss?

5           A     Mr. Cason was.

6                                 (Segment of video replayed and paused)

7     BY MR. STEWART:

8           Q     Drawing your attention to the middle of the screen,  
9     do you see a french drain down there? Do you see a black  
10    object?

11          A     I see a black object in the middle of some orange.

12          Q     All right. I'm going to play it a little bit more to  
13    see if we can get a better look at that.

14                                 (Segment of video continued and paused)

15    BY MR. STEWART:

16          Q     Does that look like a part of the french drain you  
17    were talking about?

18          A     I can't see anything or else I don't see anything on  
19    the TV screen.

20          Q     Okay. Well, not on this screen shot, but previously  
21    when we played it.

22          A     Oh, the black object? It could have been a piece of  
23    it, yes, sir.

24          Q     Okay. You were talking about erosion and such. Was  
25    soil and rock and sediment getting washed down? Is that what

1 you were talking about?

2 A Yes, sir. When they got done with the french drain,  
3 I remember we had to do a lot of facial, aesthetic things, such  
4 as, put hay in, put silt fence up. During rain events, it was  
5 washing away the side of the hill where the drain system had  
6 been in.

7 Q So rain was washing that stuff away. How about a  
8 hose? Was that washing stuff down too?

9 A It's very possible, yes, sir.

10 Q And why would you put out hay and silt fences and  
11 such? Why go through the effort?

12 A One, you want to keep your soil where it's at, in  
13 place. Two, you don't want it leaving your site.

14 Q Because if it left this site, where was it going?

15 A On somebody else's property.

16 Q What is down there in the wooded area?

17 A If I remember correctly, it's just a swamp. Just a  
18 wet, boggy area.

19 Q The plant discharges the effluent, so the treated  
20 stuff, in that area and it goes downstream, correct?

21 A Yes, sir. Further down, closer to where it actually  
22 forms a creek is where we discharge into.

23 Q But like we were talking about at the beginning, you  
24 know, water goes downhill.

25 A Yes, sir.

1           Q     So what we were just watching wasn't being pumped to  
2     the headworks?

3           A     No, sir.

4           Q     Like the other pump had been pumping to the  
5     headworks?

6           A     Yes, sir.

7           Q     And this pump was being run under Mr. Cason's  
8     direction by Sylvester Bush?

9           A     As far as I know, yes, sir.

10          Q     Not only on this one day?

11          A     That's possible. Yes, sir.

12          Q     It was out there for a while?

13          A     Yes, sir.

14          Q     You were talking about not wanting the sewage to  
15     reach down into the soil when you were talking about the liner,  
16     correct?

17          A     Yes, sir.

18          Q     And you're saying there wasn't a liner at this time?

19          A     There were several places that, when they started  
20     doing the construction trying to remove what they thought was a  
21     liner, there was several places where there was no liner  
22     whatsoever.

23          Q     And so sewage had been reaching into that soil?

24          A     Yes, sir.

25          Q     That soil that's there where that water was that's



1 getting pumped out?

2 A In that area, yes, sir.

3 Q Why did you leave the wastewater treatment plant?

4 A It was time for me to move on. I just didn't agree.  
5 When you start butting heads with people, it's time for you to  
6 move on.

7 Q Who were you butting heads with?

8 A Myself and Mr. Cason. Even though he was a good  
9 person to try to work for, he was real tough. He was real  
10 detailed-oriented. And if you didn't follow something to his  
11 detail, he got mad at you. And I just, I thought -- like, I  
12 had a opportunity that was presented to me, and it was better  
13 for me to leave.

14 Q So if you didn't do the things that he told you to  
15 do, he would get mad at you?

16 A Yes, sir. That's what most bosses do.

17 MR. STEWART: I have no further questions, your  
18 Honor.

19 THE COURT: Thank you.

20 QUESTIONS BY THE COURT

21 BY THE COURT:

22 Q Mr. Baldwin.

23 A Yes, sir.

24 Q How many other wastewater treatment facilities have  
25 you worked at or had access to as a contractor? I mean, just

1 an estimate is fine.

2 A Probably seven to ten.

3 Q Have you ever seen, at any of those other plants,  
4 water being pumped out directly into a stream or a tributary or  
5 a swamp or a wetlands area?

6 A No, sir.

7 Q This would be the only occurrence that you've ever  
8 seen of that?

9 A Yes, sir. As far as I can remember, yes, sir.

10 Q Did you find it unusual when you saw that pump  
11 pumping that water out directly?

12 A At that particular time, no, sir.

13 Q You didn't find that unusual?

14 A At that time, again, I think we were all -- and I  
15 know ignorance is not a plea. But I think at the time all of  
16 us were under the assumption that it was ground water. As I  
17 further, you know, working where I've worked, and some of the  
18 education that I've gotten, it's better now to -- if it hits  
19 the ground, I test it.

20 THE COURT: Okay. Any other questions, Mr. Stewart?

21 MR. STEWART: To follow up on that.

22 CROSS-EXAMINATION CONTINUED

23 BY MR. STEWART:

24 Q Did anybody ever come out and talk to you about this  
25 pumping? Anybody and I'm talking from the state or--

1           A     Yes, sir, one time they did.

2           Q     And did you tell them about this pumping?

3           A     No, sir.

4           Q     But you didn't think it was wrong that the pumping  
5     was occurring?

6           A     At the time when he showed up, usually, he comes to  
7     talk to Mr. Cason. Very rarely does he talk to us. If he's  
8     talking to us, we're usually talking about fishing. Usually  
9     when it comes to plant operations, he usually talks to Mr.  
10    Cason. If Mr. Cason was not available, he'd question us. And  
11    at the time, self-preservation, less said is what you do. You  
12    don't -- you let them talk to the bosses.

13          Q     Speaking a little bit about self-preservation, if you  
14    didn't think it was wrong about what was going on, what harm  
15    would there have been to mention it to him when he was talking  
16    to you about it?

17          A     Again, regardless of whether you think it's wrong or  
18    not, I've learned coming up from '93 to several different  
19    counties and cities, when the EPD, EPA shows up, they talk to  
20    the boss. They do not talk to you unless your boss directs you  
21    to talk to them.

22          Q     Because, you know, Mr. Cason, he's in charge there,  
23    right?

24          A     He was my boss. Yes, sir.

25          Q     And he wants you to follow his directions on how the

1 place is run?

2 A Well, it's just, you don't -- like I said, it's a  
3 standing rule. I don't know how to explain it. I mean we  
4 don't--

5 Q That's fine.

6 THE COURT: Mr. Theodocion.

7 MR. THEODOCION: Your Honor, thank you.

8 THE COURT: Go ahead.

9 REDIRECT EXAMINATION

10 BY MR. THEODOCION:

11 Q Mr. Baldwin, you were out there doing the different  
12 water tests that you were to do. You did the best you could,  
13 right?

14 A Yes, sir.

15 Q And Mr. Cason never instructed you to fudge any  
16 numbers, did he?

17 A No, sir.

18 Q And you wouldn't have, would you?

19 A No, sir.

20 Q You've indicated at the time -- obviously, it's not  
21 the best practice to pump anything other than through the  
22 headworks. You're better being safe than sorry, right? We  
23 realize that now. But at the time you testified that really  
24 y'all were under the impression that, hey, this is rainwater.  
25 It's groundwater. At the time, based on your training then,

1     were you of the opinion that if it had any sort of fecal matter  
2     in it, it would have been more akin to the degree of fecal and  
3     bacteria that you find in pretty much any piece of water that  
4     has fish in it, frogs, birds, that it would have that type of  
5     material?

6           A     At the time that was our belief. I mean, we didn't  
7     see nothing wrong with what we were doing.

8           Q     Okay. Because the real thing about a wastewater  
9     treatment plant is not that you're going to have matter in  
10    water, but you have to be below a certain level, right?

11          A     Correct. You're going to have biologicals as a  
12    matter in it. But you have certain levels that you cannot go  
13    above.

14          Q     So the error was assuming that that water was below a  
15    certain level instead of the safer route that was to ensure  
16    that, correct?

17          A     Yes, sir, I guess you could say so.

18               MR. THEODOCION: That's all I have of this witness,  
19    your Honor.

20               THE COURT: Anything else, Mr. Stewart?

21               MR. STEWART: Just one followup.

22                               RE CROSS-EXAMINATION

23    BY MR. STEWART:

24          Q     They were no fish in this pond?

25          A     No, sir, we did not.

1 Q This was a pond for sewage, right? Not for fishing?

2 A That's correct, sir.

3 THE COURT: Any reason why this witness can't be  
4 excused?

5 MR. THEODOCION: There's not, your Honor.

6 THE COURT: You're excused. Thank you, Mr. Baldwin.

7 MR. THEODOCION: And, Judge, I also want to point out  
8 that Mr. Raymond Fulcher of G. Ben Turnipseed, which was an  
9 inspector with that engineering firm, was interviewed on the  
10 16th of October, 2008. And per the EPA Investigative Activity  
11 Report Form 008, Page Two, indicated that he inspected the work  
12 that was being done at the holding pond, and that he thought it  
13 was ground water and rainwater that was seeping into the upper  
14 end of the pond and not sewage.

15 And, again, with regard to my example about fish, I'm  
16 not alleging there were fish that were causing the bacteria.  
17 But rather pointing out the fact that in any, basically, non  
18 swimming pool at somebody's house, you're going to have fecal  
19 matter. And the mistake here seems to clearly have been, that  
20 the people out there, they just assumed that the water was  
21 fine. This is just rainwater, groundwater. We don't need to  
22 treat it. It's obviously not best practices, it's not in  
23 accordance with the permit.

24 But when you look at the sentencing guideline that  
25 affects here, in particular where it says it assumes actual

1 contamination, given that there is no -- and your Honor is not  
2 going to hear any evidence of a documentation of any  
3 contamination. And I also note that in the Presentence Report  
4 that Ms. Mitchell indicated that there were no identifiable  
5 victims in case. There will be no evidence of environmental  
6 harm. And so the issue is going to come down to, and your  
7 Honor hit on it pretty early, that, you're right, if you have  
8 water that sits on top of ground which has previously contained  
9 sewage that that's the problem. It's not going to be pristine  
10 water.

11 But our argument against these enhancements are,  
12 looking at the water -- and, I'm sorry, garden hoses just don't  
13 put out raw sewage. There is an oxidation phenomenon. But it  
14 doesn't turn water that clear that's raw sewage. Based on what  
15 Mr. Baldwin is saying, what Mr. Fulcher said, it's clear where  
16 that water came from. So the only issue is, not that raw  
17 sewage is being pumped out, but what degree of environmental  
18 pollutants were in that water. And, again, there's going to be  
19 no test work on the water itself. No test work on the ground.  
20 Certainly no indication of any effect on the Savannah River or  
21 any of the land in between there and the Savannah River.

22 And our argument is going to be, Judge, that they  
23 have not done the most important thing which is to show it was  
24 a pollutant. There has to be a showing, some showing, based on  
25 some facts that this is a pollutant. I mean, you can

1 speculate. Not necessarily you, but anyone could speculate  
2 that it's probably this or probably that. But at some point,  
3 they have to have at least one piece of evidence as far as what  
4 was in that water before they can reach the preponderance of  
5 evidence standard. Which they're not going to be able to do.  
6 There is not going to be a single piece of evidence regarding  
7 what was in that water. And so, on those grounds, we don't  
8 think the six or the four is appropriate.

9           As I mentioned earlier, Judge, there were two things.  
10 Number one, the six because of the fact that that can't show  
11 it's a pollutant. Also because of Application Note Four which  
12 says it assumes actual environmental contamination. So I think  
13 the six level is not appropriate based on that.

14           If your Honor found that it was, later in that  
15 headnote it says that:

16           Depending upon the harm resulting from the emission,  
17 the quantity and nature of the pollutant, the duration of the  
18 offense and the risk associated with the violation, a departure  
19 of up to two levels in either direction from those prescribed  
20 may be appropriate.

21           And so you can imagine the most obscene case where we  
22 just have all kind of evidence of serious environmental  
23 contamination, you'd be looking at eight levels as opposed to  
24 this case which, I would suggest, wouldn't be appropriate for  
25 the six. But if it was, clearly would be in the range of two



1 down from that.

2 But I would also say, Judge, if your Honor finds  
3 based on what Mr. Steward presents later that this was a  
4 pollutant, you could properly classify this water as a  
5 pollutant, I would still suggest that this is more akin to  
6 discharging a pollutant in violation of the permit as opposed  
7 to a discharge of the pollutant. Again, particularly when you  
8 read it in line with the assumption that there's contamination.

9 So I would suggest that if your Honor finds that this  
10 was a pollutant that the four levels for operating in violation  
11 of the permit would be the appropriate enhancement. But of  
12 course, we would ask that you don't impose any of them. But I  
13 know Mr. Stewart is going to present the case to the contrary.

14 THE COURT: But are you arguing that pumping water  
15 directly out of that pond into a tributary is at a minimum not  
16 a violation of their EPD permit?

17 MR. THEODOCION: It's hard to argue that it's not a  
18 violation of the permit. I think that the six-level  
19 enhancement seems to require a showing of contamination. But I  
20 believe that your Honor is correct. It would be a four  
21 level -- it's clearly in violation of the permit to allow that  
22 water to leave that pond, leave that basin, without being  
23 treated.

24 THE COURT: So you concede, then, that at a minimum  
25 it is a violation of the permit?

1           MR. THEODOCION: Well, I hate to use the word  
2   concede, your Honor. I can understand how you would think it  
3   is.

4           THE COURT: I understand. I understand. But you're  
5   not arguing that clearly it's not a violation. That's not your  
6   argument.

7           MR. THEODOCION: I'm not, Judge. They have a permit  
8   which governs their discharge of water into that tributary.  
9   And this has to do with complied with. Absolutely.

10          THE COURT: Mr. Stewart, your response.

11          MR. STEWART: Your Honor, the counsel's candor is  
12   entirely appropriate. And the permit is for it to go through  
13   the system and go out the effluent, not out of a pipe. So that  
14   much is clear. However, at the beginning of counsel's  
15   argument, his very good argument, he talked about this double  
16   counting, kind of double dipping. His issue with the  
17   guidelines, the two enhancements, the six and the four.

18                 Yet, the Eleventh Circuit, in the *United States*  
19   *versus Perez* case from 2004, that citation is 366 F.3d 1178,  
20   they were presented with that very same argument. And they  
21   rejected it. They said, the guidelines are set up, and these  
22   are the guidelines we've all been following. And it's not  
23   impermissible double counting. It's not double dipping; it's  
24   just how the guidelines are set up. And they approved giving  
25   both of those enhancements at the same time.

1           Then they tackled the question that Mr. Theodocion  
2   has aptly put to the Court. And I'll just go ahead and read  
3   Mr. Perez's argument and the Government's contention first  
4   because that's the order it comes in in the opinion.

5           Under the Government's reading of the Commentary, for  
6   the guidelines, the government must prove only that the  
7   defendant's conduct fits the language of the guideline. If the  
8   defendant [sic] proves the defendant was responsible for the  
9   discharge, release, or emission of a pollutant, it has met its  
10   burden. According to this interpretation, the guideline  
11   assumes actual environmental contamination if the text of, as  
12   we're dealing with, Section 2Q1.3(b)(1) is met.

13           However, Perez insists that an assumption of actual  
14   environmental contamination is inappropriate since that section  
15   pertains to dumped materials that are not hazardous or toxic.  
16   Just like Mr. Theodocion was arguing. Instead, Perez contends  
17   that the Government had the burden to prove, by a preponderance  
18   of the evidence, that the dumping caused actual environmental  
19   contamination. The exact same argument today.

20           The Eleventh Circuit went on to hold in the *United*  
21   *States versus Perez* case that that is not the case. Actual  
22   environmental contamination does not need to be proved. If it  
23   meets the guideline's language then it is assumed by the  
24   guidelines, and the enhancement is appropriate. And it is not  
25   double counting to give the six points for the pumping and the

1 four points for the permit violation.

2 I have this case. I only printed one copy. I can  
3 give it to whoever you want, your Honor. If you want to see it  
4 or to the clerk.

5 THE COURT: Please.

6 MR. STEWART: Your Honor, this also came up in the  
7 case of *United States of America versus Ortiz* out of the Tenth  
8 Circuit. That's a 2005 case, citation 427 F.3d, 1278, where  
9 the Court did not apply these enhancements and was reversed.  
10 And the Court said in that case they were dealing with the  
11 ongoing, continuous or repetitive discharge. They said two  
12 pumping occasions, two discharges, qualifies for the ongoing,  
13 continuous or repetitive discharge.

14 So, your Honor, the case law that interprets these  
15 guidelines is clear that the enhancements recommended by the  
16 probation office, one, can be given. Two, the evidence in this  
17 case supports that they be given because we're not just dealing  
18 with just one pumping incident that was caught on video. How  
19 often do you catch pumping on video? Yet it happened on this  
20 one occasion. But you have the testimony from Mr. Baldwin that  
21 it happened on different occasions. And, in fact, your Honor,  
22 on your bench in front of you, you have the grand jury  
23 transcripts from these other individuals, these employees that  
24 worked at the plant. You've got the testimony of Mr. Pittman  
25 and Mr. Carroll who worked there before him. Your Honor,

1 drawing your attention to Mr. Pittman and Mr. Carroll, they  
2 indicate that this was not an isolated incident. This was  
3 ongoing, continuous and repetitive discharge. And, in fact,  
4 they testified as to actual environmental contamination.

5 Turning, your Honor, to Page--

6 MR. THEODOCION: Judge, while he's looking for this,  
7 I do want to point out, your Honor, that the indictment charged  
8 on January 29 of pumping and then in the Presentence Report,  
9 Ms. Mitchell indicated, as far as relative conduct, it was the  
10 January 29th, 2004 pumping. So I don't think it's appropriate  
11 now to say, well, we're going to present evidence of relevant  
12 conduct that wasn't included in the Presentence Report. They  
13 had an opportunity to object to this just like I did. Just  
14 like I can make an objection that there's too much relevant  
15 conduct included, they're allowed to object that there's too  
16 little. And we're allowed to have notice of any relevant  
17 conduct that will be proposed to be used against us at the  
18 sentencing hearing.

19 And, again -- and we're not making an issue out of  
20 the continuous discharge. I mean, just watching the video.  
21 We're not going to make an argument, well, they haven't proved  
22 that it was continuous and repetitive. Those are pretty vague  
23 terms. But we were going to suggest that it's not going to be  
24 appropriate for them to say that this occurred on other dates  
25 and times given the fact that they did not object to

1 Ms. Mitchell's assertions in the PSR.

2 MR. STEWART: Your Honor, we did give notice, 404(b)  
3 Notice, where we outlined all of these events. And under the  
4 Government's understanding of relevant conduct, and I've got to  
5 find the Presentence Report in front of me, I'm not so sure  
6 that it was such a bright line. But it may or may not. The  
7 Presentence Report will speak for itself as to whether the  
8 relevant conduct is only limited to this one occasion. But to  
9 contest the issue of, well -- and counsel says they're not  
10 contesting the issue of whether it was continuous or not.

11 So as this evidence under 404b) would be used, this  
12 shows that this wasn't just a mistake. It wasn't, you know,  
13 something that happened. That this was going on for a long  
14 time. Your Honor has the grand jury transcripts in front of  
15 him, if you'd like to review them. They're the same  
16 transcripts that have been provided to the defense counsel and  
17 probation officer. The transcripts we've all been working off  
18 of.

19 So without going back through the Presentence Report  
20 closely, I can't dispute Mr. Theodocion's statement that  
21 there's no reference to any of this in there. I believe that  
22 there was in the addendum. But I may be incorrect. But the  
23 Government would take the position that it's occurred many  
24 different times. The testimony, the sworn testimony from the  
25 grand jury, is in front of you. Not only from Mr. Pittman,

1 from Mr. Carroll, from Mr. Davis, from Mr. Baldwin talked  
2 about, you know, he saw the pumping. From Mr. Bush.

3 And getting back to Mr. Poole, because you haven't  
4 heard a lot about Mr. Poole. You have his grand jury testimony  
5 in front of you. Mr. Poole was the man who made this video,  
6 your Honor. That was his voice on there as it's described in  
7 the grand jury transcript. Mr. Poole knows that this water was  
8 not pure rainwater that was coming out of there. He knew  
9 because he went down there where it was flowing down the hill  
10 and smelled it. So they didn't perform any testing. But using  
11 their sensory perception, sight and smell -- smell that we  
12 can't get off of this video -- he testified to the grand jury  
13 that it was sewage contaminated water that was being pumped on  
14 this occasion on this video. So that does go back to the  
15 specific video that we're talking about today.

16 But it wasn't just this one time. The sewage was  
17 pumped on other times. But if counsel is correct that that is  
18 beyond the scope of the Presentence Report, then it is. But  
19 the transcripts are there for your Honor along with the index  
20 that shows the different pages where they testified about  
21 pumping on other occasions, and the discharge, as well as the  
22 testimony about sewage being in that pond on various occasions.

23 THE COURT: Thank you.

24 The issue now before the Court is the defendant's  
25 objections to Paragraphs 10, 14, 16, 26 and 27. Specifically,

1 the enhancement in Paragraph 26 under Sentencing Guideline  
2 Section 2Q1.3(b)(1)(A) and the additional four-point  
3 enhancement. That was the six-point enhancement. The  
4 additional four-point enhancement under 2Q1.3(b)(4).

5 The defendant has denied that the electric pump in  
6 question ever pumped raw sewage, but only pumped rainwater.  
7 The Court notes that under Sentencing Guideline 2Q1.3(b)(1)(A),  
8 the Court needs to find that the offense resulted in an  
9 ongoing, continuous or repetitive discharge, release or  
10 emission of a pollutant into the environment. The Court also  
11 notes that under Sentencing Guideline Section 2Q1.3(b)(4) in  
12 order to find that this enhancement is applicable, the Court  
13 must find that the offense involved a discharge without a  
14 permit or in violation of a permit.

15 As to the six-point enhancement under 2Q1.3(b)(1)(A),  
16 the Court has listened to the argument of counsel for the  
17 defense and the argument of counsel for the Government. The  
18 Court has listened to the live testimony of Mr. Todd Baldwin of  
19 the ESG Operations. The Court has reviewed the very detailed  
20 response provided by the probation officer to this objection,  
21 particularly as it relates to the testimony by others involved  
22 with the Harlem Wastewater Treatment Plant as to their  
23 conclusions regarding the pumping of this water into the  
24 tributary.

25 The Court notes that under *United States versus*



1     *Perez*, which is an Eleventh Circuit case, 366 Fed 3d 1178 from  
2     2004, that actual contamination is not required for a discharge  
3     enhancement under this particular provision. The Court further  
4     notes that while this water was not tested, it seems to the  
5     Court clear that pumping water, whatever the source of that  
6     water, from a wastewater treatment pond directly into a  
7     tributary rather than back through the wastewater treatment  
8     plant is akin to pumping untreated human sewage through that  
9     pipe into the tributary.

10             The evidence in this case, in my opinion, clearly  
11     shows that the water was being pumped out of a, while not used,  
12     out of an existing wastewater treatment pond. Therefore, the  
13     Court is convinced that the water being pumped out of the pond  
14     is a pollutant under the provisions of this particular  
15     sentencing guideline. Clearly, the video shows that it was an  
16     ongoing process. Therefore, the Court finds that the  
17     application of the six-point enhancement under Subsection  
18     (b)(1)(A) is appropriate, and the objection raised by the  
19     defendant as to this particular enhancement is overruled.

20             As it relates to the enhancement under 2Q1.3(b)(4),  
21     under Paragraph 27 of the Presentence Report for a discharge  
22     without a permit or in violation of a permit, again, the Court  
23     has considered the arguments of counsel, listened to the  
24     testimony of Mr. Baldwin, and reviewed the very detailed  
25     response by the probation officer to these objections which

1 contains a number of comments regarding the activities going on  
2 at the plant.

3 And the Court finds that, by a preponderance of the  
4 evidence, that the pumping of this water from this wastewater  
5 treatment pond at the Harlem Wastewater Treatment Plant was  
6 clearly either without a legal permit or was in violation of  
7 the existing permit issued by the Georgia Environmental  
8 Protection Division governing that particular plant.  
9 Therefore, the Court finds that the four-point enhancement is  
10 likewise appropriate in this case, and the defendant's  
11 objections are overruled.

12 MR. THEODOCION: Judge, if I may.

13 THE COURT: You may.

14 MR. THEODOCION: It wasn't included in a formal  
15 objection, although we dispute it, we objected to the base  
16 level. Would your Honor consider the two-level adjustment to  
17 that is addressed in Application Note Number Four, basically  
18 which says that since this section can cover such a wide range  
19 of potential occurrences that, you know, six is necessary.  
20 It's really kind of a four through eight boost up. And  
21 considering what, certainly by Mr. Baldwin's account, seemed to  
22 be a lack of *mens rea* here and given the broad spectrum of  
23 possibilities of discharge of pollutants that you could  
24 consider in terms of (b)(1)(A) either four or five levels as  
25 opposed to six.

1 THE COURT: Mr. Stewart.

2 MR. STEWART: Your Honor, Mr. Theodocion is referring  
3 to is what is commonly referred in the guidelines as a guided  
4 departure. That, he is correct, there is two points play under  
5 the commentary to the guidelines. It says six, but under a  
6 guided departure, a Court can go down one or two or go up one  
7 or two. It's giving the Court the discretion. The discretion  
8 that when these guidelines were mandatory, that the Court now  
9 enjoys completely after the *Booker* case.

10 The Government's position is that the guidelines as  
11 found by the Court are correct, and that the Court, of course,  
12 will fashion a fair sentence at the appropriate time, but that  
13 the guidelines calculation done by the Court is correct. And  
14 under the provisions of a guided departure, the burden is upon  
15 the party seeking the departure. The Government did not seek a  
16 guided departure up two points. We would have had the burden  
17 for that, and the defendant has the burden. And based on the  
18 evidence that you have from the witness stand and also in front  
19 of you, the Presentence Report and such, the Government's  
20 position is that the six points here, the heartland, what the  
21 guidelines sets out, are appropriate in this case.

22 THE COURT: Well, Mr. Theodocion, I hear your  
23 argument. And, of course, once the final sentence is imposed  
24 in this case, you know as well as I, that I have the ability to  
25 either depart from the guidelines or to vary under the 3553(a)

1 provisions. But as it relates to this specific departure, if  
2 you will, I agree that this is not one of the more egregious  
3 environmental contamination cases that I've seen either in  
4 private practice or on this bench.

5           On the other hand, I can't agree that this was a  
6 harmless mistake that would justify me departing on this  
7 particular enhancement. I find it incredible that anyone  
8 working in the wastewater treatment industry wouldn't know that  
9 dropping a sump pump into a wastewater treatment pond, whatever  
10 the source of the water, and pumping it directly into a creek  
11 is not a serious violation of federal and environmental laws.  
12 So based on that, I just do not believe that a departure on  
13 this particular enhancement is appropriate. So I hear your  
14 objection or argument, and I'll overrule it.

15           MR. THEODOCION: Yes, your Honor.

16           THE COURT: Thank you. The Court notes that a number  
17 of objections to factual statements were -- a number of  
18 objections were offered by the defense. As to those factual  
19 statements contained in the Presentence Report as to which  
20 there were no objections, the Court adopts those statements.  
21 As to the factual statements to which there were objections  
22 that were somehow upheld, the Court will adopt the factual  
23 statements as amended by the Court's findings. A copy of which  
24 the Court will order to be included in the final Presentence  
25 Report.

1           Questions of guideline application have arisen which  
2     the Court has gone through in detail. Again, as to the  
3     guideline applications to which there were no objections, the  
4     Court adopts those. As to the guideline applications to which  
5     there were objections, the Court will adopt the application  
6     guidelines as amended by the Court's previous findings in this  
7     matter. And, again, the Court orders that a copy of its  
8     findings as to the modified or adjusted application guidelines  
9     shall be affixed to the final Presentence Report.

10           Now, Ms. Mitchell, if my memory is correct, the only  
11     adjustment that I've made is the two-level enhancement for  
12     obstruction of justice. Is that correct?

13           MS. MITCHELL: That is correct, Judge.

14           THE COURT: All right. So based upon that, what  
15     would be the range in this particular case with a total offense  
16     level of 15.

17           MS. MITCHELL: The guideline range is 18 to 24  
18     months. And the fine range has also been reduced to \$4,000 to  
19     \$40,000.

20           THE COURT: Are those the only changes, then, to the  
21     Presentence Report as to the guidelines based upon my  
22     adjustment?

23           MS. MITCHELL: That's correct, Judge.

24           THE COURT: Thank you. Does anyone object to the  
25     probation officer's calculation, then, of the appropriate

1 offense level and penalties now?

2 MR. THEODOCION: No, sir. That's correct.

3 THE COURT: Mr. Stewart?

4 MR. STEWART: No, your Honor.

5 THE COURT: Now, I note that in order to arrive at  
6 the Level 15, that under Paragraph 32, there is an adjustment  
7 for acceptance of responsibility. Mr. Stewart, are you  
8 planning to move under 3E1.1(b) for the third and final point?

9 MR. STEWART: Yes, your Honor, pursuant to the plea  
10 agreement.

11 THE COURT: Thank you.

12 Any objections, Mr. Theodocion?

13 MR. THEODOCION: No, sir.

14 THE COURT: Very well, then the Court will grant that  
15 particular motion and note, then, that the three points are  
16 applicable.

17 The Court hereby determines that the applicable  
18 advisory guidelines for this sentencing are as follows:

19 Total Offense Level 15; Criminal History Category I;  
20 18 to 24 months imprisonment; one year of supervised release;  
21 \$4,000 to \$40,000 fine; and a \$300 special assessment.

22 Does anyone know any reason at this point, then, why  
23 sentencing should not proceed?

24 Mr. Stewart?

25 MR. STEWART: No, your Honor.

1 THE COURT: Mr. Theodocion?

2 MR. THEODOCION: No, sir.

3 THE COURT: All right. Mr. Theodocion, this is the  
4 part of the hearing where I will call upon you and Mr. Cason to  
5 present any evidence or testimony or statements in mitigation  
6 of the sentence. So I turn the floor over to you.

7 MR. THEODOCION: Thank you, your Honor. And I  
8 understand that several persons directly sent correspondence to  
9 your office. I apologize for that. But Ms. Mitchell has given  
10 me copies of these documents.

11 THE COURT: No apology needed.

12 MR. THEODOCION: Okay. And are they in the record or  
13 do you need my copy?

14 THE COURT: They are in the record.

15 MR. THEODOCION: I know your Honor has read them. I  
16 won't review all of those letters. But we do just have a few  
17 people that would like to speak on Daniel's behalf, your Honor.  
18 We have three persons that would like to briefly be heard, if  
19 that's acceptable.

20 THE COURT: That will be fine. That will be fine.

21 MR. THEODOCION: Dr. Casey Stephens.

22 MR. STEPHENS: Yes.

23 MR. THEODOCION: If you will come up, sir. You can  
24 just tell the judge, after you say your name for the record,  
25 how you know Daniel and your experience with him.

1           MR. STEPHENS: Your Honor, it's a privilege to be  
2 here. As I think about you and this serious case, we have  
3 prayed and prayed and prayed for your decision. As far as  
4 Brother Cason, he's an outstanding Christian. I have known him  
5 for, oh, approximately 25 years, he and his family. Whatever  
6 he tells you, you can trust. If every man in this town was  
7 like Daniel Cason you wouldn't need locks on your doors. You  
8 wouldn't need locks on your automobiles. You wouldn't need  
9 jails. Because what he tells you, you can believe. He is one  
10 of our teachers. He has served well, he and his family, at our  
11 church. And I'm honored to be able to stand in his behalf and  
12 say I'm thankful to know a man like Daniel Cason. Thank you.

13           THE COURT: Thank you, sir. May I ask you some  
14 questions.

15           MR. STEPHENS: Sure.

16           THE COURT: I will admit to you that there are some  
17 aspects of this case that trouble me. But in this letter from  
18 your congregation, which I appreciated, there was a statement  
19 said:

20           We plead with you, Judge Hall, to remove all politics  
21 from this case.

22           Tell me what you meant by that.

23           MR. STEPHENS: We wouldn't let the Government dictate  
24 to us exactly what the seriousness of this case is as far as  
25 being fair with the defendant.



1           THE COURT: How do you square the Daniel Cason that  
2     you've described, and that has been described in a number of  
3     letters that I've received and read, how do you square that  
4     person as the person you know and see in your church as an  
5     obviously very important person in your church--

6           MR. STEPHENS: Yes.

7           THE COURT: -- with the Daniel Cason who has pled  
8     guilty to these federal crimes which involve, for lack of a  
9     better word, filing false reports, lying?

10          MR. STEPHENS: Well, I would have to say, Judge, that  
11     I think he's a fall guy to be honest with you. I've talked to  
12     him. I've prayed with him. I've prayed with him many times  
13     about it. Therefore, I simply say, if Daniel Cason said he  
14     didn't do it, he didn't do it. I think he was coerced to sign  
15     this. Therefore, that's the reason I'm here in his behalf.

16          THE COURT: Well, you just hit on what I'm asking.  
17     You say you think he's the fall guy. Why is that?

18          MR. STEPHENS: Because of all the evidence that is  
19     there. You see, as I was listening to the State, there's no  
20     proven evidence that the water was contaminated. None  
21     whatsoever.

22          THE COURT: Do you think he's the fall guy because of  
23     the federal charges or do you think he's the fall guy for the  
24     City of Harlem?

25          MR. STEPHENS: Could be the City of Harlem.

1 THE COURT: Okay.

2 MR. STEPHENS: But I still, as I've told him all the  
3 time, Brother Daniel, I'll stand with you. I believe you.

4 THE COURT: Okay.

5 MR. STEPHENS: Thank you, Judge.

6 THE COURT: Thank you for your candor and honesty and  
7 for coming.

8 PERSON IN THE GALLERY: Your Honor, permission to  
9 speak.

10 THE COURT: Has this gentlemen been called by anyone?

11 PERSON IN THE GALLERY: No, sir. I'm a concerned  
12 citizen. I've been knowing Daniel Cason for a long time.

13 THE COURT: Unless you're called by either the  
14 defense or the Government, sir, I'm not going to recognize you  
15 today.

16 PERSON IN THE GALLERY: All right, sir.

17 THE COURT: Mr. Theodocion, go right ahead.

18 MR. THEODOCION: Thank you, your Honor. Jerry  
19 Campbell.

20 Mr. Campbell, when you get the microphone, the judge  
21 has heard the evidence and made legal determinations on the  
22 case. If you could just give the judge some of your  
23 impressions of Daniel away from this case as a person and your  
24 experiences with him.

25 MR. CAMPBELL: Well, thank you, Judge, for the

1 opportunity to come before your court today and say something  
2 about Mr. Cason who I feel is a dear friend, a real Christian  
3 man. I've known Mr. Cason for approximately ten years. I know  
4 that he is a real Christian, true Christian man, somebody that  
5 would do what's right. I don't think that he would  
6 intentionally do anything that's against the law or against any  
7 rules. I had the opportunity to work for Mr. Cason for about  
8 two years at this treatment plant. My tenure there under him,  
9 he always encouraged us to do what was right. Do not, if the  
10 numbers didn't come out right, they just didn't come out right.  
11 That's what you reported.

12 THE COURT: Mr. Campbell, when you were employed  
13 there with Mr. Cason, did you ever see any evidence or sense  
14 that he was being directed to do any of this activity by  
15 someone else within the government of the City of Harlem?

16 MR. CAMPBELL: Anything that he did came from the  
17 direction of his supervisor or from the counsel. I never saw  
18 anything that was done illegally. I was not present during the  
19 timeframe that is in question here today.

20 THE COURT: Okay.

21 MR. THEODOCION: Thank you, Mr. Campbell.

22 THE COURT: Thank you, Mr. Campbell.

23 MR. THEODOCION: And lastly, your Honor, Mr. Henry  
24 Chambers, another long-time friend.

25 MR. CHAMBERS: Thank you, your Honor, for having the

1     patience to listen to me this morning.

2             THE COURT: Thank you for coming.

3             MR. CHAMBERS: If I could, I will read my comments.

4             THE COURT: That will be fine.

5             MR. CHAMBERS: I just wanted to make sure that I  
6     covered the material that I wanted you to hear.

7             Your Honor, my name is Henry Chambers, Jr. I'm a  
8     deacon at Trinity Baptist Church. I stand before you this  
9     morning on behalf of Mr. Daniel Cason, Brother Daniel Cason, my  
10    brother in Christ, and my Sunday School teacher.

11            I have known Mr. Cason and his family for over 20  
12    years. I have never known a more godly man in my life. Nor  
13    any other man -- I've never known a more godly man. Mr. Cason  
14    is honorable, an honorable man, superb with superb integrity, a  
15    mortal man, I nor any man is perfect. But Mr. Cason has the  
16    qualities that any business would look for as a potential  
17    employee. He has a kind of willing spirit, always willing to  
18    help anyone. And it is my belief that the City of Harlem was  
19    looking for a fall guy to charge the infraction of the law on,  
20    and they chose Mr. Cason. And certainly Mr. Cason did not  
21    willingly or knowingly break the law.

22            Mr. Cason is a veteran of Vietnam as I am. He as  
23    well as myself were subjected to returning from the war and  
24    witnessing President Jimmy Carter pardon those men who chose  
25    not to serve this country in Vietnam and ran to Canada. I know

1     this is far reaching. Those men who chose not to serve their  
2     country in Vietnam, and ran to Canada, this is an act of  
3     desertion in the time of war. Certainly, Mr. Cason deserves to  
4     be pardoned of any wrongdoing that he may have been charged  
5     with.

6             Your Honor, I know you have rules that you must  
7     follow. I request that you dismiss the charges presently  
8     against Mr. Cason and find him the correct person to charge --  
9     or find the correct person to charge.

10            Respectfully, Henry, E. Chambers, Jr, servant of the  
11     Lord.

12            Perhaps I should have just told you without reading  
13     it. But anyway, Daniel is my Sunday School teacher. If I  
14     wanted to be judged by any person, any mortal person, in this  
15     country, I would want to be judged by Daniel Cason. He's a  
16     fine man. I don't think you'll find a finer man walking in  
17     shoes. That's the end of my statement, sir.

18            THE COURT: Thank you.

19            MR. THEODOCION: Thank you, sir.

20            Judge, I'll just -- I know you've read the  
21     Presentence Report. Just to highlight a few things about  
22     Daniel. He's 66 years of age. He only completed the ninth  
23     grade. He ended up getting his GED later. So he did not come  
24     into wastewater with degrees and, you know, two or three  
25     scientific sheepskins on the wall. And he had a tough task out

1     there.

2             He's been married 47 years to his wife, Louise, who  
3     is here today. He has three sons, Daniel, Tracy, and Dusty,  
4     who are all here. Obviously, numerous other friends, too many  
5     friends to mention are here. Probably the majority of them are  
6     from his church. He's very active not only in the lives of his  
7     family, his sons, but also his church, as you heard. He did  
8     enlist in the United States Army in 1966. He was honorably  
9     discharged with a rank of E5 Sergeant. Some of the awards that  
10    he received, the Army Commendation Medal, Vietnam Service Medal  
11    with Bronze Service Star, National Defense Service Medal,  
12    Vietnam Campaign Medal as Sharp Shooter, Combat Infantryman's  
13    badge, and two Outstanding Service Bars.

14            From '72 to '90 he was employed at Fort Gordon as a  
15    civil service employee. He began working at the City of Harlem  
16    in 1994, was there through 2009 where he earned a modest income  
17    and worked hard. And tried to serve the City of Harlem.

18            We didn't prompt the people who came up there to  
19    speak to your Honor. Daniel has pled guilty to three federal  
20    offenses dealing with reports. He's always maintained, just  
21    like Mr. Baldwin maintained, that they didn't feel like they  
22    were contaminating anybody or putting anybody at risk. And  
23    if -- and I truly believe that Daniel would have rather drank  
24    that water out of the hose into his mouth than put a person or  
25    land at risk of contamination. But that's just not how you do

1 it. And we understand.

2 The guidelines are very strict, however, though,  
3 Judge. And we're looking at a total level of 15 and 10 levels  
4 out of that 15 comes from conduct which has not been pled to,  
5 and which has been subject to the lower standard of proof. And  
6 it kind of goes back to the problems that a lot of us have  
7 always had with the sentencing guidelines. And we feel like we  
8 can come into court and defend ourselves with the liberties and  
9 rights that we have, and the Government, before we're going to  
10 be sentenced for something, we have to be proved beyond a  
11 reasonable doubt. We have a right to have a jury hear it.  
12 And, unfortunately, in this case, we had some minor charges  
13 that he was definitely guilty to. And so a plea would have to  
14 be forthcoming.

15 And so, unfortunately, though, your Honor, that  
16 subjects you to this more serious punishment in areas which you  
17 really don't -- I mean, you still have due process rights, but  
18 they're certainly not the rights associated with the primary  
19 Bill of Rights that we look at in these kinds of cases.

20 But, as Mr. Stewart has conceded, you do have  
21 discretion. And it's particularly appropriate in a case like  
22 this where you have the incident with the pumping that is such  
23 a large part of these levels. And it could deal with such a  
24 variety of different types of occurrences. And one thing about  
25 the 3553 factors is they tend to primarily focus on the

1 defendant whereas the guidelines is all conduct-oriented. It's  
2 all conduct. In 3553, it allows you to do things that you used  
3 to not be able -- you couldn't ask for a downward departure  
4 because a man was honorably discharged from Vietnam, that he  
5 enlisted and he went to war, and he was on the battlefield.  
6 You couldn't do it; it was inappropriate. But it is  
7 significant.

8           When a man 66 years of age, he has no juvenile or  
9 adult criminal history. You know, he's worked either for his  
10 national government or city government roughly his entire life  
11 with courage and with honor, then he should come into court and  
12 that should mean something. I know it does mean something.  
13 So, Judge, we're going to ask your Honor that based on the fact  
14 that the level, the guideline level, even with all that being  
15 said is only 18 to 24 months. And knowing that your Honor is  
16 charged to give a sentence that does enough to satisfy the  
17 concerns and the goals of 18 3553, but not too much, we just  
18 humbly ask your Honor to consider a sentence that does not  
19 involve placing Mr. Cason in a federal penitentiary.

20           I think based on the loss of his career, the loss of  
21 his good name and the significant, I'm not sure inconvenience  
22 is the right word, but life-altering situation that even  
23 pretrial release puts you in, but certainly supervised release,  
24 probation, does, that your Honor could fashion a sentence that  
25 could satisfy those goals. And it's hard for me to consider --



1 I know that the goals as they relate to the defendant that  
2 confinement time would be more than necessary. He came into  
3 court and he admitted what he did. And he's always done that.  
4 And we had evidentiary disputes and things of that nature and  
5 judicial disputes. Those are more for me than anybody else.  
6 But he knows what went on, and it's cost him tremendously.  
7 It's cost him. And he's paid a great price and will continue  
8 to as a convicted felon, which he has been for several months  
9 now.

10 So, basically, Judge, that's it. We'll just ask you  
11 to consider a sentence that will not involve incarceration.

12 THE COURT: Mr. Cason, I'm required to ask you if you  
13 have anything you'd like to say to the Court. Do you?

14 THE DEFENDANT: Your Honor, I'd just like to say that  
15 everything that you see is not as it seems all the time. And I  
16 done what I done here because I felt like I would get time if I  
17 went the other way. I feel like that if I had of went through  
18 the court process and fought this thing the whole way through,  
19 it would have been a long drawn out thing. It would take a  
20 while to fight it. But there are certain things that were said  
21 here that is not true. None of it. And I could prove them  
22 given time. But I felt like this was my shortest bat and  
23 easiest way to get through this system. And I'm not the  
24 criminal that it makes me look like I am today.

25 THE COURT: Mr. Stewart, your opportunity to respond.

1           MR. STEWART: Thank you, your Honor. We began this  
2   sentencing hearing earlier this morning with the count -- with  
3   the court recounting for the record that on March 31st, 2009,  
4   the defendant appeared before yourself, the Honorable J. Randal  
5   Hall, a United States District Court Judge, and pled guilty to  
6   three counts of the indictment, which essentially charge lying  
7   on forms that he was required to submit; forms he, as the  
8   Director of Public Works for the City of Harlem, was required  
9   to submit. In that position of trust, public trust, the  
10  defendant broke the law, and came in and admitted it, to his  
11  credit.

12           And as part of his plea agreement where he came in  
13  and admitted it, he also admitted that he knowingly caused  
14  pumping to occur. That's in the black and white language of  
15  his plea agreement that he signed. So he admitted to breaking  
16  the Clean Water Act, to lying. And he did so standing in front  
17  of your Honor, testifying that he was here without coercion, of  
18  his own free will and accord. And then he has come before us  
19  today, your Honor, through very able counsel, and presented his  
20  position.

21           The Government doesn't get to choose its defendants.  
22  We take crime where it's found and where the evidence takes us.  
23  And we've presented that evidence in this case, and the  
24  defendant elected of his own free will and accord to plead  
25  guilty to violating the Clean Water Act. And so now the day of

1 reckoning has come. And the Court, under the law, under the  
2 duty imposed upon you, will impose a sentence consistent with  
3 the factors that Congress has set out.

4           Mr. Theodocion referred to Section 3553. That's the  
5 section that lays out the different elements that the Court  
6 considers in imposing sentence; elements that you're bound to  
7 follow at Congress's demand. You've also followed the  
8 sentencing guidelines which have been put into place through  
9 the same procedure. Yet, one of those factors in Section 3553,  
10 the section which has been referred to as the one that allows  
11 the molding of the sentence to the defendant, is the element of  
12 deterrence.

13           This Court will speak loudly today when it imposes  
14 its sentence in this matter. And one of the elements that the  
15 Court, through its sentence, will pronounce, one of those  
16 elements is deterrence. And people, similarly situated to  
17 Mr. Cason, directors of public works all around will look to  
18 see what happened today, to see what happens when you lie on  
19 reports that the public is trusting you to turn in, when you  
20 knowingly cause pumping, as the defendant admitted in his plea  
21 agreement. They're going to see what happens, the consequences  
22 of that.

23           The consequences for Mr. Cason so far have been that  
24 he was charged as laid out in the plea agreement, in  
25 August 14th, 2008, pled guilty March 31st, 2009. And as the

1 plea agreement reflects, he maintained his job. He was on  
2 administrative leave for a good while after being charged, but  
3 he maintained his job until the end of May of 2009. He's no  
4 longer in the job. But for two months after pleading guilty to  
5 a federal felony offense, applicable to his distinct position,  
6 he maintained his job. So, now, the time for judgment has come  
7 because it hasn't occurred before then. The time for the  
8 consequences and the message of deterrence to come out, as  
9 required by the law.

10 As the Government has stated previously, the  
11 Government steadfastly maintains that you've been vested with  
12 the authority, the discretion to make the fair sentence under  
13 the law. And Congress has set out the factors. You have the  
14 guidelines, which are used to maintain equality across this  
15 country in the sentencing of individuals. And then you have  
16 the factors set out by the Congress itself. Deterrence, the  
17 message that is sent for what has occurred and what has been  
18 presented today.

19 Your Honor, the Government requests that the Court  
20 follow the guidelines, the guidelines which have been in place  
21 for a long time to govern these situations because they will  
22 lead you to the fair and just result. This is a case about a  
23 public works director, the head of the plant. This isn't some  
24 random fellow out in the public. Someone whose job it was to  
25 tell the truth on these forms, to run that plant according to

1 the law. And it didn't happened. And so a message needs to be  
2 sent because people will be listening. Thank you, your Honor.

3 THE COURT: Anything else from anyone?

4 I'm going to take about a ten-minute recess. I'll be  
5 back at, let's say, 20 till. That will be a little longer than  
6 ten minutes. Twenty till.

7 (AFTER RECESS)

8 THE COURT: Mr. Theodocion, if you and Mr. Cason  
9 would come to the lectern please.

10 Mr. Cason, this is what I call an iceberg case. For  
11 some reason today, and as I've prepared for this hearing, I  
12 have a strange sense that I'm just seeing the tip of the  
13 iceberg. I'm troubled by that. You've pled guilty to filing  
14 false statements, been convicted of that crime. But I'm just  
15 not convinced that I have the whole story about what went on at  
16 that wastewater treatment plant. I wish that I did. Maybe one  
17 day I will.

18 But as a result, I only have your conviction to deal  
19 with. Now, let me say that the Clean Water Act reflects the  
20 American public's concern over clean waterways and the need to  
21 control water pollution. The Court notes that the objective of  
22 that Act is to restore and protect the integrity of our  
23 nation's waters. Now, an unlawful discharge and the filing of  
24 reports that may or may not have disclosed unlawful discharges  
25 into our nation's waters are disturbing anywhere, but

1 particularly so in Augusta, where the Savannah River is the  
2 reason that we are here. The Savannah River is the source of  
3 our commerce and has been for most of our history. And now the  
4 Savannah River is a critical source of the drinking water for  
5 many communities, including Columbia County and Augusta.

6 I firmly believe that the maintenance of a clean  
7 river, of a clean Savannah River, is critical to the future and  
8 viability of our area. I also note, Mr. Cason, that when  
9 citizens hear that government officials who occupy a position  
10 of public trust take steps to avoid compliance with the law,  
11 including the filing of false reports, it only further erodes  
12 public confidence in our government. Pollutions, streams and  
13 creeks can have a devastating impact on humans, on wildlife and  
14 on commerce.

15 Now, whether you were the fall guy in this case, I  
16 don't have the evidence to say that one way or another. It's  
17 been implied here today. And, certainly, I have suspicions.  
18 But the bottom line is, you were the director of a wastewater  
19 treatment plant in Harlem, Georgia charged with the  
20 responsibility of insuring that that wastewater treatment  
21 complied with every aspect of our nation and state's  
22 environmental laws. And in that, you violated that trust by  
23 filing false reports, again, which covered up unlawful activity  
24 related to the discharge of pollutants into a tributary that  
25 led directly into the Savannah River.

1           I have listened to the defendant and his counsel. I  
2   have listened to a number of citizens who have come and  
3   testified on behalf of the defendant. I have reviewed the  
4   Presentence Report. I have considered the factors set forth in  
5   18 United States Code Section 3553. As it relates to those  
6   factors, I have paid particular attention to the history and  
7   characteristics of this defendant.

8           Mr. Cason has no criminal record. He apparently has  
9   been a leader in his church for a number of years, teaching  
10   Sunday School. With the exception of these incidents that  
11   relate to the crimes for which he has pled guilty and been  
12   convicted, it appears that he's led a law-abiding life as a  
13   citizen of this country and this district. I take note of his  
14   very impressive military record and certainly thank him for  
15   that record.

16           I've also paid close attention to factor (a)(2)(A)  
17   which is the need for the sentence imposed to reflect the  
18   seriousness of the offense, to promote respect for the law, and  
19   to provide just punishment for the offense. Related to that is  
20   factor (2)(B), to afford adequate deterrence to criminal  
21   conduct.

22           In this particular case, I have the director of a  
23   wastewater treatment facility that has engaged in activities  
24   that have resulted in the violations of our laws. Harlem is  
25   not the only town in this area with knowledge of this case.

1     There are a lot of other towns, large and small. A lot of  
2     other wastewater treatment directors that are probably watching  
3     this case who may, because of budget constraints, be enticed or  
4     tempted to take steps in order to save money but rather would  
5     lead to environmental violations. Certainly this sentence  
6     needs to act as a deterrent to anyone or any municipality or  
7     county that may be contemplating making cost-benefit decisions  
8     that should not be made.

9             Relying on those factors that I've just discussed,  
10    those specific factors under 3553(a), I have decided that I  
11    will vary downward in the final sentence that is imposed in  
12    this case. Therefore, pursuant to the Sentencing Reform Act of  
13    1984, it is the judgment of the Court that the defendant,  
14    Daniel Webster Cason, is hereby committed to the custody of the  
15    Bureau of Prisons to be imprisoned for a term of 12 months and  
16    one day as to each of Counts Three, Five and Eleven to be  
17    served concurrently.

18            The Court notes again that this is a variance based  
19    upon the Court's consideration of the factors set forth in 18  
20    U.S.C. Section 3553(a). The Court finds no reason to depart  
21    from the sentence called for by application of the advisory  
22    guidelines inasmuch as the facts in this case are of the kind  
23    contemplated by the Sentencing Commission. Nevertheless, a  
24    variance under 3553 is warranted.

25            Upon considering the factors set forth in United



1 States Sentencing Guideline Section 5E1.2D, it is ordered that  
2 the defendant shall immediately pay to the United States a fine  
3 of \$3,000. Payment is to be made payable to the Clerk of the  
4 United States District Court. It is further ordered that the  
5 defendant shall pay to the United States a special assessment  
6 of \$100 as to each count, for a total of \$300, which shall be  
7 due immediately.

8           Upon release from imprisonment, the defendant shall  
9 be placed on supervised release for a term of one year. While  
10 on supervised release, the defendant shall comply with the  
11 standard conditions of supervision adopted by this Court and  
12 the mandatory conditions required by 18 United States Code  
13 Section 3583, which will include, but not be limited to, urine  
14 testing, a prohibition against possession of any firearm or  
15 other dangerous weapon and a prohibition against violation of  
16 any law.

17           Further, the defendant shall cooperate in the  
18 collection of a DNA sample as directed by the probation officer  
19 pursuant to 18 United States Code Section 3583. The defendant  
20 shall participate in a program of testing for drug and alcohol  
21 abuse. And if the Court determines that it is necessary, the  
22 defendant shall participate in a program of treatment for drug  
23 and alcohol abuse.

24           The defendant shall complete 100 hours of community  
25 service during the first 10 months of supervision. The

1 defendant shall provide the probation officer with access to  
2 any requested financial information. The defendant shall not  
3 incur new credit charges or open additional lines of credit  
4 without the approval of the probation officer unless the  
5 defendant is in compliance with the installment payment  
6 schedule.

7 A curfew is imposed as a special condition of  
8 supervised release. The defendant shall not leave his  
9 residence from 10:00 p.m. until 6:00 a.m. daily during the  
10 period of supervision except when such leave is approved in  
11 advance by the probation officer.

12 The probation officer is hereby directed to provide  
13 the defendant with a written statement which sets forth all of  
14 the conditions to which the term of supervised release is  
15 subject.

16 The Court has accepted the plea agreement because it  
17 is satisfied that the agreement adequately reflects the  
18 seriousness of the actual offense behavior and that accepting  
19 the plea agreement will not undermine the statutory purposes of  
20 sentencing. In accordance with the plea agreement, it is  
21 ordered that Counts One, Two, Four and Six through Ten of the  
22 indictment be dismissed.

23 Ms. Mitchell, do you have any recommendation on  
24 reporting?

25 MS. MITCHELL: Your Honor, we normally wait 30 days

1 following sentencing. I do not have a calendar, Judge.

2 THE COURT: That's all right. I have one. Just a  
3 moment.

4 MS. MITCHELL: By 2:00 p.m.

5 THE COURT: Let's say Tuesday, January 19th. Monday  
6 is a holiday.

7 MS. MITCHELL: Okay, Judge.

8 THE COURT: All right. Tuesday, January 19th,  
9 2:00 p.m. Tuesday, January 19th. The Bureau of Prisons will  
10 notify you of that location. That is January 19th, 2010.

11 Pursuant to the plea agreement with limited  
12 exceptions, the defendant has waived all rights conferred by 18  
13 United States Code Section 3742 to appeal this sentence. The  
14 defendant has also waived the right to appeal this sentence on  
15 any other ground and has waived the right to attack this  
16 sentence in any post-conviction proceeding.

17 Sentence has now been pronounced. Other than any  
18 objections which have previously been stated for the record,  
19 does anyone have any objection as to the Court's finding of  
20 fact, conclusions of law or to the manner in which the sentence  
21 was pronounced?

22 Mr. Stewart?

23 MR. STEWART: No, your Honor.

24 THE COURT: Mr. Theodocion?

25 MR. THEODOCION: Judge, would you be willing to

1 include in your sentence a recommendation of confinement in the  
2 area? Either Edgefield or Estill?

3 THE COURT: I will. I will recommend to the Bureau  
4 of Prisons that the defendant be housed either in the Estill,  
5 South Carolina Federal Correctional Institution or the  
6 Edgefield Federal Correctional Institution.

7 Anything else?

8 MR. THEODOCION: No, sir.

9 THE COURT: Thank you.

10

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17 CERTIFICATION

18 I certify that the foregoing is a true and correct  
19 transcript of the stenographic record of the above-mentioned  
20 matter.

21

22 /s/ Rhea Rangel

January 25, 2009

23 Rhea Rangel, RPR

Date

24

25